

IN THE UNITED STATES DISTRICT COURT  
IN AND FOR THE DISTRICT OF DELAWARE

- - -

STARHOME GMBH, ) Civil Action  
)  
Plaintiff, )  
)  
v. )  
)  
AT&T MOBILITY LLC, )  
ROAMWARE, INC. AND )  
T-MOBILE USA, INC., )  
)  
Defendants. ) No. 10-434-GMS

- - -

Wilmington, Delaware  
Wednesday, March 14, 2012  
9:30 a.m.  
Markman Hearing

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge

APPEARANCES:

KENNETH L. DORSNEY, ESQ.  
Morris James LLP  
-and-  
JOHN DiMATTEO, ESQ., and  
ROBERT G. KOFSKY, ESQ.  
Willkie Farr & Gallagher LLP

Counsel for Plaintiff

RODGER D. SMITH, III, ESQ.  
Morris, Nichols, Arsht & Tunnell LLP

-and-

JOSH KREVITT, ESQ.,  
R. SCOTT ROE, ESQ., and  
BENJAMIN HERSHKOWITZ, ESQ.  
Gibson, Dunn & Crutcher LLP  
(New York, NY)

Counsel for Defendants

1 THE COURT: Good morning, counsel. Please, take  
2 your seats.

3 Why don't we start out with a round of  
4 reintroductions, beginning with plaintiff.

5 MR. DORSNEY: Good morning, Your Honor. Ken  
6 Dorsney from Morris James. I would like to introduce the  
7 Court to John DiMatteo and Robert Kofsky of Willkie Farr;  
8 from Infographics Jeff Herzka; and Shi Ophir is with us from  
9 Israel from Starhome sitting in the back.

10 THE COURT: Good morning.

11 Mr. Smith. Good morning.

12 MR. SMITH: Good morning, Your Honor. Rodger  
13 Smith from Morris Nichols Arsht & Tunnell for the  
14 defendants. With me at counsel table this morning are my  
15 co-counsel from Gibson Dunn & Crutcher, Josh Krevitt, Ben  
16 Hershkowitz, and Scott Roe.

17 THE COURT: Good morning. All right.

18 Counsel, have you discussed how you want to  
19 proceed today?

20 MR. DiMATTEO: Yes, we have, Your Honor.

21 THE COURT: What do you want to propose?

22 MR. DiMATTEO: Starhome will begin and address  
23 some of the terms that are near and dear to Starhome's  
24 heart, and Roamware will follow and respond to our arguments  
25 and present any terms that are near and dear to their heart.

1 And we may or --

2 THE COURT: You will present the terms that you  
3 want me to resolve. Whether they are near and dear to your  
4 heart, I don't much care, frankly. I am not trying to be  
5 unkind. But, really --

6 MR. DiMATTEO: I understand.

7 THE COURT: You have agreed on sort of where the  
8 rubber meets the road in terms of what is at issue. Is that  
9 correct?

10 MR. DiMATTEO: That is my hope and expectation,  
11 yes, Your Honor.

12 THE COURT: You are proposing to go through that  
13 list of elements, discuss your position on them, then I am  
14 going to hear a response.

15 MR. DiMATTEO: Yes.

16 THE COURT: Then I will give you a reply. That  
17 is what I am going to do.

18 Is that what you envision, counsel?

19 MR. KREVITT: Your Honor, I am fine with that  
20 procedure. It's not consistent with the discussion that I  
21 had with counsel this morning.

22 THE COURT: Tell me what you discussed this  
23 morning. That's why I start out this way.

24 MR. KREVITT: I understand, Your Honor. It is  
25 perfectly appropriate for us to try to understand how we are

1 going to proceed today.

2 There are 12 terms, roughly, depending on how  
3 you chop it up --

4 THE COURT: That is roughly my count.

5 MR. KREVITT: -- that have been submitted to  
6 Your Honor. As we would expect Your Honor would want, we  
7 approached Starhome yesterday and asked exactly the question  
8 Your Honor raised this morning. How should we proceed today  
9 and are there terms that maybe we don't need to spend the  
10 time with the Court on and the briefing is sufficient?

11 Starhome's response, just yesterday, was, We  
12 need to address all the terms.

13 And that's fine. That's fine. We came  
14 prepared, Your Honor, to do just that.

15 Five minutes ago, or five minutes before this  
16 hearing began, Mr. DiMatteo informed me that there had been  
17 a change in Starhome's approach and that rather than address  
18 12 terms today, for which we prepared and are of course  
19 prepared, Starhome intends to present on just two terms, and  
20 we would respond to those terms and then we are free to do  
21 whatever it is we want to do.

22 We are obviously prepared to proceed in any way  
23 that is most helpful to the Court.

24 THE COURT: On that point, here is the thing. I  
25 could take these matters on submission. There is nothing in

1 the Markman decision that requires me to hold the hearing.  
2 The reason I hold Markman hearings is to put a finer point  
3 on the matters in dispute so that I can understand really  
4 what is at issue, better understand the technology, better  
5 understand about where the parties disagree, so I can try to  
6 do my best in coming up with a correct solution or  
7 resolution of the disagreement, whether it is correct or  
8 not. I don't have a very good batting average, not me  
9 personally but all of us District Judges, in terms of the  
10 Federal Circuit. It is just the life we lead. Life tenure  
11 has its ups and downs. That is all right. I get that.  
12 What I need you to do is sharpen that focus.

13 MR. DiMATTEO: Certainly, Your Honor. Without  
14 getting distracted into "He said, she said" today, Starhome  
15 just wants to address two claim terms: intelligent gateway  
16 and routing center. Any other terms, we are happy with the  
17 submission. We think the ordinary meanings, typically, we  
18 think the words are pretty clear. I will defer to Roamware.  
19 Any other terms they want to address today, we are happy to  
20 address them.

21 MR. KREVITT: As I said, Your Honor, I am fine  
22 proceeding in that fashion. I understand, given Mr.  
23 DiMatteo's representations, that Mr. DiMatteo intends to  
24 address two terms.

25 We believe the Court may find it helpful for us

1 to -- for all the reasons Your Honor identified -- for us to  
2 run through the other terms. We have prepared materials.  
3 We can answer any questions Your Honor may have. We will  
4 try to do that as quickly as possible. If it appears as we  
5 are proceeding that Your Honor does not have questions on  
6 those terms or believes that the Court has all the  
7 information it needs, obviously, we will move on.

8 THE COURT: Okay. All right. Intelligent  
9 gateway and what?

10 MR. DiMATTEO: Routing center. That would be  
11 the third one, C on defendants' list. It is the second one  
12 on plaintiff's list. We try to keep things reasonably in  
13 sync here. It comes out of Claim 10.

14 THE COURT: Just conferring with my law clerk  
15 and confirming what our understanding is.

16 MR. DiMATTEO: Yes, Your Honor.

17 THE COURT: I have the final claim chart that  
18 the parties submitted, the joint claim chart. Intelligent  
19 gateway is the first one.

20 MR. KREVITT: Your Honor, routing center is  
21 numbered by the Page 5 of the amended joint claim  
22 construction chart.

23 THE COURT: When was the amended joint claim  
24 construction chart filed?

25 MR. KREVITT: This is dated December 22, Your

1 Honor.

2 THE COURT: That may be the rub here. As the  
3 kids say, it may be "my bad."

4 Mr. Dorsney, let me take a look at that.

5 Okay. Let's proceed with first addressing  
6 intelligent gateway and routing center. I will get a  
7 response from the defendants, a reply from plaintiffs.

8 And I will let you know what else if anything we  
9 are going to do.

10 MR. DiMATTEO: I don't think there will be much  
11 issue on routing center.

12 Your Honor, let me begin by just giving you a  
13 little background on this invention.

14 THE COURT: Go ahead.

15 MR. DiMATTEO: During the late nineties and  
16 early 2000s, when cellphones became very, very popular, if  
17 you had occasion to travel abroad, with work, I often was  
18 called to Europe. I have a client there. Frequently, it  
19 was very frustrating. While my phone would work, I could  
20 make calls, be able to make a call, it was very difficult,  
21 because I had to know, if I was in Germany, the right  
22 sequence of numbers to dial home. If I was to dial Germany,  
23 I didn't know whether I had the city code or not. And short  
24 codes, which I am not a big short-code user, weren't  
25 available at all.

1           Today, with the advent of Starhome's invention  
2           that is now throughout Europe and the United States, that is  
3           no longer a problem. It's a minor miracle. I can  
4           personally attest to this. I can just dial the number as if  
5           I am sitting here in Delaware, and it goes through  
6           magically. I can dial from my phone book, which is really  
7           important, my contact list, I can click on it and I can be  
8           in Germany and dial Mr. Dorsney or I can dial my wife or  
9           whoever else I want to speak to, and this invention works.

10           Well, how does it work? What was the problem  
11           and how did they solve it?

12           The problem was, when I show up in Germany or  
13           anywhere outside of the United States, to be specific, and I  
14           try to dial a number at home, the mobile network, the  
15           visiting network, and for my example, I will call it the  
16           German network, doesn't recognize my sequence of dialing  
17           numbers. It has a switch there to switch my call, because  
18           it doesn't recognize it. So it just drops the call, or, I  
19           don't know if you recall, you get like a message in German  
20           that you couldn't understand. It was a little frustrating.

21           The prior art solution at that time, to the  
22           extent anybody was trying to solve the problem, was to try  
23           to send my call in Germany back here to my T-Mobile account  
24           to figure out what's going on and then to transfer back the  
25           signal. That was very complicated to do because the German



1 network had to constantly talk to my network back here and  
2 try to figure out how to translate this call.

3 Starhome's solution was, we are not going to do  
4 that. What we are going to do is put in the German network,  
5 the roaming network, an intelligent gateway, this box, this  
6 computer box. And we are going to fill it with all the  
7 dialing sequences we know throughout the world, the dialing  
8 sequences of T-Mobile New York, the dialing sequences of  
9 South Africa, the dialing sequences of France, Germany,  
10 every dialing sequence we know, as well as short codes,  
11 these short codes. There is this huge database of all this  
12 information. And we are going to tell the German network,  
13 every time you get a roamer, somebody visiting you from  
14 another country, and you can't figure out what he is  
15 dialing, send it to our box, because our box will figure out  
16 how to translate it and then send you the right number that  
17 you will recognize, German network, to complete the call.

18 And that invention is the subject of two patents  
19 that are in suit here, the '487 and '431 patents. If we can  
20 just take a look at the cover sheet.

21 Fortunately, Your Honor, this is the same  
22 specification for both patents. So for today, the  
23 majorities of claims we are asserting are from the first,  
24 the '487 patent. My references will be to them.

25 So how does it work according to the invention?

1 Let's take a look at Figure 2. We have here this No. 39, if  
2 you would imagine, is me in Germany roaming and talking to  
3 the German visiting network. Here is No. 30, is the  
4 visiting network. And here, that number has this mobile  
5 switch, and it's designed to take my calls and switch them  
6 out to the public network that we all know about.

7 So when I dial my home number, without all the  
8 German prefixes -- this switch doesn't understand them -- it  
9 says, this is somebody from New York. I don't know what he  
10 is trying to dial. So I am going to send this over to this  
11 box here, the intelligent gateway. And this intelligent  
12 gateway has a database here, 31, it has logic combined with  
13 that database to say, aha, I know this is a guy from New  
14 York. I know what he is trying to dial. And I have the  
15 right translated number for this German network to  
16 recognize.

17 So it translates the number, sends it back to  
18 the switch, sort of in German, if you will, in the German  
19 switch protocol, and the call is completed.

20 This is fairly straightforward and fairly  
21 simple, but a very important invention.

22 Let me show you now how its captured in the  
23 claim language that's going to be part of today's  
24 discussion.

25 This is Figure 2 on the left and Claim 10 on the

1 right, Your Honor. And it's a system comprising an  
2 intelligent gateway. We know this is this box that Starhome  
3 invented. Associated with a first mobile network. That is  
4 going to be my German network or visiting network over here,  
5 that first mobile network having connections to other mobile  
6 telephone networks. Okay. It's connected to an  
7 international gateway. You can talk to other mobile  
8 networks anywhere else. Said intelligent gateway adapted to  
9 translate a dialing sequence when dialed by a roaming  
10 cellular telephone device roaming in said first mobile  
11 network.

12 Okay. So this intelligent gateway is going to  
13 translate my numbers, translate the dialing sequence, into a  
14 destination number. That's the number that this German  
15 switch will recognize. Said roaming cellular telephone  
16 device having a home network. I have a home network. Here  
17 it's New York. And a routing center in said first mobile  
18 network. This switch here. Adapted to route said dialing  
19 sequence network to the intelligent gateway for translating.

20 So this switch here is adapted to route the  
21 calls to the intelligent gateway.

22 It's fairly straightforward, the claims. And  
23 the other claims are fairly descriptive and easy to  
24 understand.

25 Like most defendants, they want to tear apart

1 and look at every word and read limitations in. I know I  
2 sound like a classic plaintiff in saying that. I, too, have  
3 sat on that side of the table. But I would be remiss if I  
4 didn't make that statement, Your Honor.

5 I have a list here of all the different terms I  
6 understand that are in dispute.

7 Intelligent gateway, mobile network, routing  
8 center, is identified as adapted to, adapted to deliver  
9 short messages, so and so forth. These are fairly simple  
10 terms, Your Honor. I don't think they will require a  
11 tremendous amount of argument and dispute to probably  
12 construe.

13 As I told you, I want to focus just on two of  
14 them, intelligent gateway and routing center.

15 Let's see what we are fighting about with  
16 intelligent gateway. Can I show Letter A.

17 This is in our answering brief to defendants'  
18 reply brief. We are saying that this box, this intelligent  
19 gateway, it's a network element, it's like a computer box,  
20 implemented in databases or the like and application logic  
21 to perform its operations.

22 Now, in the context of the claims -- I will come  
23 back to this disputed construction in a moment -- but in the  
24 context of the claims, it is there, the intelligent gateway  
25 is there to translate telephone numbers, dialing sequence.

1 It's going to take my New York dialing sequence and  
2 translate it into a German dialing sequence to complete my  
3 call. That's the gateway's function that it performs. I go  
4 back to that.

5 The defendants want to add an additional  
6 element. They want the intelligent gateway to not only talk  
7 to the mobile network, in other words, connected to the  
8 German network, but they want it to require that it also has  
9 to talk to some other network, something outside the mobile  
10 network. They use the term, it's connected to another  
11 network external to the mobile network, for example, packet  
12 switch network.

13 They are going to come to the podium and say  
14 this is justified for three reasons. They are going to say  
15 it's justified by just the term gateway alone. The fact  
16 that we use the word gateway, that means it has to do two  
17 things. It's got to transfer information to the mobile and  
18 another external network. They are going to say that some  
19 representation in our foreign prosecution mandates this  
20 narrow construction. And they are going to say, if you look  
21 at one of our preferred embodiments, that mandates this  
22 construction.

23 They are wrong, for three reasons. There is no  
24 dispute that the gateway performs some translation function.  
25 That's key to the defendants' definition. If we show their

1 opening brief at Page 4, gateway was universally understood  
2 as a machine that provides necessary translation to connect  
3 two different networks. We don't really dispute that, Your  
4 Honor. In the context of this claim -- can I have Figure  
5 2 -- this patent, this database and this intelligent gateway  
6 is translating a dialing sequence that is recognized in the  
7 home network. In other words, it is translating a dialing  
8 sequence that I would use in New York, to a dialing sequence  
9 that would be recognized in Germany. That is the gateway  
10 function.

11 There is nothing about that that says, oh, this  
12 has to be connected to anything else. We look at how it's  
13 used in the claims, that's very clear.

14 Can we take a look at Claim 10. We walk through  
15 Claim 10, and we see Claim 10 is associated with a first  
16 mobile network. And it translates the dialing sequence.  
17 "Adapted to translate a dialing sequence."

18 When the patentees wanted to connect the  
19 intelligent gateway to other networks, they expressly added  
20 that limitation in. I will direct your attention to Claim  
21 1. In Claim 1, the intelligent gateway is coupled to a  
22 packet switch network. And then later on, it's coupled to a  
23 first mobile network. So the patentees are very clear, when  
24 they want the intelligent gateway to be connected to more  
25 than the mobile network, they say so. And why do they do

1       that? That's a preferred embodiment.

2               If you will show Figure 4, please.

3               There is an embodiment where the intelligent  
4 gateway is not only connected to the mobile switch center,  
5 but it's also connected to other networks through a packet  
6 of switch networks. So it's inconsistent with the words of  
7 the claims that are in suit. And not just the words of the  
8 claims of these patents, it is also inconsistent with the  
9 description in the specification.

10              As I showed, if we go back to Figure 2, when you  
11 read the description on how Figure 2 goes to translating  
12 sequence 1, the switch doesn't recognize it, it goes over to  
13 2, translates it, goes back to the switch 3, delivers it to  
14 the phone network and finally meets the destination. There  
15 is nothing about this description that says the intelligent  
16 gateway has to be connected to something else other than the  
17 mobile network. And that description is found at Column 3  
18 of the patent, beginning around Line 23.

19              So there is nothing about the word gateway that  
20 mandates connected to two networks. There is nothing about  
21 the description in the specification that says it's got to  
22 be connected to two networks. Indeed, the specification  
23 says just the opposite. And, three, there is nothing about  
24 this foreign prosecution that the defendants wrap themselves  
25 around which mandated either.

1 First, whenever a party in suit starts going to  
2 foreign prosecutions and picking sound bytes from them, a  
3 court has to be on its guard. The Federal Circuit warns, be  
4 very careful when you are going to go to that type of  
5 extrinsic evidence. This is a good example of it.

6 Can we show A-047.

7 This is the part of the foreign prosecution that  
8 the defendants point to --

9 THE COURT: You maintain this is not part of the  
10 intrinsic record.

11 MR. DiMATTEO: Not intrinsic. In fact, they put  
12 it in a separate declaration, outside the joint appendix.

13 THE COURT: Do defendants agree with that  
14 characterization?

15 MR. KREVITT: Your Honor, technically, the  
16 foreign prosecution is extrinsic evidence, which, as I will  
17 explain in a moment, the Federal Circuit has instructed  
18 District Courts to consider, not to ignore.

19 The answer to the precise question is that the  
20 foreign prosecution is technically not part of the intrinsic  
21 record.

22 THE COURT: Okay. We will talk about your  
23 perception of what the Federal Circuit has instructed I must  
24 do in a moment.

25 MR. KREVITT: I am looking forward to that, Your



1 Honor.

2 THE COURT: You may not be. Let's see.

3 MR. DiMATTEO: Okay. So in this case, Your  
4 Honor, the defendants do very little to explain what's  
5 happening here. There was a prior art reference called D-1  
6 that had nothing to do with the home network, had nothing to  
7 do with roamers and a roaming network and trying to  
8 translate dialing sequences, had nothing to do with that.  
9 And the examiner was pointed to some box. And they are  
10 saying, that does some sort of intelligent switching but  
11 nothing like the gateway translating function that is done  
12 here. It's not a gateway, because the gateway provides  
13 access to external went beyond the immediate network.

14 The examiner affirms that gateway is defined  
15 this way, from one network to another, and it is submitted  
16 that the claims and specifically the term intelligent  
17 gateway should be construed in light of this definition.

18 There is nothing about this section of the  
19 prosecution history which says, when you construe  
20 intelligent gateway, you have to construe it as requiring it  
21 communicating with a mobile network and communicating at the  
22 same time to another network. All the attorney is saying  
23 here is that our gateway provides a translation function.

24 If we go back to Figure 2, our gateway is  
25 providing a translation function with knowledge of the home

1 network. I know about these foreign dialing sequences, so I  
2 can translate them and connect them to another --

3 THE COURT: Counsel, would you go back. That  
4 section you had up from the foreign prosecution, is that in  
5 my joint appendix?

6 MR. DiMATTEO: No, it is not, Your Honor. I  
7 think you will find that at Mr. Roe's declaration in his  
8 opening briefing, Exhibit 5, then there is an A-047 in the  
9 lower right-hand corner.

10 THE COURT: Okay. Thank you.

11 MR. DiMATTEO: So, one, I don't think this is  
12 relevant at all, that you should be considering this file  
13 history. Two, the defendants do nothing to explain to this  
14 Court the prior art reference that was at issue and why  
15 anything said here would mandate that this Court construe  
16 gateway as something different than the words, the claims,  
17 and the specification say. And, three, once you understand  
18 this, you realize that this doesn't apply at all to the  
19 issue at hand.

20 So that's all I have on intelligent gateway,  
21 Your Honor. It's a simple translator of my dialing  
22 sequences into a dialing sequence that my roaming network  
23 can recognize.

24 THE COURT: Let's go on to routing center.

25 MR. DiMATTEO: Routing center. All right.

1 MR. KREVITT: Excuse me. Would you like --

2 THE COURT: No. Let's go on to routing center.

3 MR. KREVITT: Very well.

4 MR. DiMATTEO: All right. There is no  
5 dispute -- let's take a look at Claim 10, actually. The  
6 term routing center is found in Claim 10 of the '487 patent,  
7 Your Honor. And it came in there by amendment. During the  
8 prosecution of this patent, the patent attorney amended the  
9 term mobile switching center to routing center. I think I  
10 have that amendment at my fingertips.

11 39, I think it is.

12 No, 37.

13 Well, I will let my colleagues at the bench find  
14 me the right cite.

15 The short story is, putting back up Claim 10,  
16 this originally said a mobile switching center in said first  
17 mobile network. During prosecution it was amended to  
18 routing center.

19 Let me take a little detour and remind you where  
20 this mobile switch center is. Figure 2, that is this box  
21 here, this switch which sends dialing sequences to and  
22 receives it from the intelligent gateway.

23 Because of that, there is no dispute between the  
24 parties that a routing center would include a mobile  
25 switching center. We are agreed on that. The question this

1 Court has to answer is whether it is broader than a mobile  
2 switching center, whether it needs something more because it  
3 was amended from mobile switch center to routing center.  
4 And if it is something broader, just how broad is it?  
5 That's the question that's put to the Court.

6 Now, it's plaintiff's position, it's no broader  
7 than a mobile switch center. And if it's any broader, it's  
8 only a slight variation of that. And that's what I am going  
9 to conclude with.

10 Before I get there, let me take a little detour  
11 in explaining telephone calls.

12 This is greatly simplified so that I can  
13 understand it. I am not an expert on phone calls, but I  
14 understand some of the basic concepts. The basic concept is  
15 every time you place a call, there are really two parts to  
16 it. There is the call itself, and the dialing sequence for  
17 control signals. This harks back to the old days -- and I  
18 am old enough to say I did this -- when we used to have to  
19 dial our numbers, that would set off a bunch of switches,  
20 that would give me the dialing number, then there was an  
21 actual switch, there was a switch that would connect the  
22 wires, so when I called you down here in Delaware, there was  
23 literally a connection for our voice to travel through.

24 That doesn't literally happen today. Everything  
25 is digitized and switched electronically. But the same

1     concept of our call itself, the voice component, and the  
2     dialing sequence, exists today.

3             And that is discussed in the specification at  
4     various times, particularly on a feature called tramboning.  
5     I am going to direct your attention to Column 3, Lines 30 to  
6     40.

7             Actually, before we get there, let me go to  
8     Figure 2. This is little technical, so stay with me, Your  
9     Honor.

10            When a call comes in, the mobile switch center  
11     gets that dialing sequence that I talked about as well as  
12     the call. That is the phoning ringing, the call I am trying  
13     to make.

14            The mobile switch center can do one of two  
15     things with this invention. It can say, I don't understand  
16     this dialing sequence, so I am going to switch the whole  
17     call, the voice component as well as the dialing sequence,  
18     to the intelligent gateway. So now the call itself has been  
19     switched over to the Starhome box. The mobile switch is  
20     free to do other switches and go back. The intelligent  
21     gateway can do the translation and then send the call back.  
22     I figured this out for you, and I am going to switch the  
23     call back to the mobile switch center. The term of art  
24     there, they actually have a term of art for it, they call it  
25     tramboning, if you will, because the call is sort of

1       tramboned by a route.

2               The other option described in the specification  
3       is, certain switches have the ability to hold the call.  
4       This switch is going to hold this call that it can't  
5       understand, and instead of sending the whole call over to  
6       the intelligent gateway, it's just going to send the dialing  
7       sequence that says, intelligent gateway, here is a dialing  
8       sequence I don't understand. And it's going to hold the  
9       call. So instead of transferring the whole call over, it  
10      just says, here, intelligent gateway, here is my dialing  
11      sequence. Can you translate it for me? The intelligent  
12      gateway translates it, thank you, and completes the call.

13             This is described in the specification at Column  
14      3, Lines 30 to 40.

15             It's just below this.

16             Let me get 40 to 60. I won't go through all  
17      these acronyms in detail.

18             Step 3 represents, this step may be required  
19      when the switch does not support the call redirection  
20      switching. The call redirection switching refers to a  
21      process by which the intelligent gateway requests the switch  
22      to route the call to a specified destination.

23             So in the context of the claim, call redirection  
24      switching is the scenario where the switch sends everything,  
25      the call and the dialing sequence, to the intelligent

1 gateway.

2 Can we scroll down a little more.

3 Step 3 at the bottom.

4 So when it's possible, when I have such a  
5 switch, the state of the call may be either established or  
6 in process. When it's not possible, then I can send only  
7 the data signal. I am not doing this justice in describing  
8 it well, Your Honor. But you understand the concept.

9 There is two ways. I can send the call and the  
10 dialing sequence together or not.

11 So why am I boring you with this? It comes down  
12 to the term routing center, Your Honor. A routing center  
13 has to be able to route both the call and the dialing  
14 sequence. It's part of the mobile network. And it has to  
15 be able to manage both. And basically it performs the  
16 identical function. It has to at least be able to perform  
17 all the functions that the mobile switch center can call.

18 So why did the applicant amend it from mobile  
19 switch center to routing center? We don't know. There is  
20 nothing about the file history that mandated it or is  
21 explained. It's silent on the issue.

22 We don't think it's any broader than a mobile  
23 switch center. But if it is, it's not by much. Perhaps the  
24 applicant wanted to capture not only just mobile switching  
25 but some embodiment where land lines are switched as well

1 through this, and translated. Something a little broader  
2 than a mobile switch center.

3 Defendants want to make this very broad. And we  
4 all know, when a defendant wants to make a claim term  
5 broader, they must have some prior art in mind. And I don't  
6 know what prior art reference they have in mind. And we  
7 don't know that today. Some day we perhaps will. But what  
8 they want the Court to construe is that it's any network  
9 element that construes dialing sequence, just the dialing  
10 sequence. I will show you their construction -- oh, I  
11 forgot to mention one very important thing, Your Honor. I  
12 will mention this, talk about their construction, and sit  
13 down.

14 Last night, we slightly modified our definition  
15 of routing center to capture this concept of a routing  
16 center has to deal with calls and the sequence, and the  
17 voice, and the dialing sequence. I alerted counsel last  
18 night with an e-mail to that effect. I have for the Court,  
19 if I may approach --

20 THE COURT: Do you have two copies of that?

21 MR. DiMATTEO: I have many copies.

22 So you are clear, Mr. Dorsney, when he handed up  
23 the joint claim construction to you, that was our second  
24 amended joint claim construction, which has this change in  
25 it but hasn't been filed yet. But it was the only one we



1 had around.

2 Just to show you the difference, here is what  
3 the briefing said.

4 One or more elements responsible for dialing  
5 sequence, routing calls with dialing sequences. It has to  
6 be able to deal with the call and the dialing sequence  
7 itself, the routing center.

8 The defendants -- this is interesting -- they  
9 agree that it's got to route dialing sequences. They agree  
10 that it's a mobile switch center. But they are trying to  
11 define it in the negative. But it's not limited to that. I  
12 don't think the Court can do that in terms of claim  
13 construction. I can't say, well, we can all agree, an apple  
14 is an apple. But it's not limited to that. That's not  
15 going to help the jury, it's not going to help the Federal  
16 Circuit, it's not going to help the parties narrow the  
17 issues. They have to propose some definition. I don't know  
18 what it is. The reason we don't know what it is is we don't  
19 know what prior art they have in mind when they are asking  
20 this Court to broaden the term routing center to be  
21 something beyond a mobile switch center.

22 That's all I have on the subject, Your Honor.

23 THE COURT: Okay, counsel. Let's hear from your  
24 opponent.

25 MR. DiMATTEO: Thank you.

1 MR. KREVITT: Your Honor, for the record, Josh  
2 Krevitt for the defendants.

3 THE COURT: Good morning.

4 MR. KREVITT: Good morning. We have prepared  
5 some materials that with your indulgence we would like to  
6 hand up.

7 THE COURT: Hand them to Ms. Walker.

8 MR. KREVITT: As Your Honor will see, we have  
9 materials in this packet on all of the terms. And we have  
10 tabs to help the Court find the portions that we are talking  
11 about easily.

12 THE COURT: Counsel, what I would like you to  
13 do, in addition to whatever background you want to do, is  
14 simply focus your attention on the two terms.

15 MR. KREVITT: That is what I will do, Your  
16 Honor. Then we can take a break --

17 THE COURT: I don't know if we will take a  
18 break.

19 MR. KREVITT: I mean pause and ask Your Honor  
20 how the Court wishes to proceed.

21 Let me start with a very short response on Mr.  
22 DiMatteo's description of the technology.

23 There is, with respect, a fundamental  
24 mischaracterization of the invention, and everything flows  
25 from that. I think I am going to be able to show the Court

1       that.

2               As Mr. DiMatteo explained, this is a picture of  
3       the PCT application, Your Honor, which is incorporated by  
4       reference. That is intrinsic evidence. This is the prior  
5       art. And this shows two networks connected by just a good  
6       old-fashioned telephone infrastructure. As Mr. DiMatteo  
7       explained, there were circumstances under which, if you were  
8       roaming in one network, you couldn't access some of the  
9       capabilities of your home network. And the patents go to  
10      that issue.

11             Mr. DiMatteo said that Starhome's invention is  
12      used throughout the United States. In fact, there are no  
13      customers that use Starhome's product in the United States.  
14      But it is true that the patent goes to this question of how  
15      do we allow, when you are roaming, a user to access  
16      capabilities of the home network. That's what the patent  
17      goes to.

18             And you see here, Your Honor, that the asserted  
19      patents, Figure 1 there at the bottom, that is Starhome's  
20      invention, one of the inventions. That is the first figure  
21      in the patent. And that is the system that's disclosed in  
22      the claims.

23             And the key, Your Honor, is the intelligent  
24      gateway. That is what we are going to turn to in just a  
25      moment. That is in blue, Your Honor. And you can see that

1 that is connected on the left to the visiting network, which  
2 is referred to as the VPLMN, that's the network that the  
3 person roaming is visiting. And the intelligent gateway is  
4 in turn connected to a packet switch network. That is in  
5 yellow, Your Honor. We are going to cover those issues in a  
6 moment.

7 I just put up at the top, Your Honor, a portion  
8 from the specification. This refers to the present  
9 invention. This is not limited to the embodiments, as the  
10 Court is aware. When a patent specification describes the  
11 present invention as opposed to a particular embodiment,  
12 that carries more weight. And the very first sentence, when  
13 they begin to describe, that is highlighted there, the  
14 system providing these services, that is the services to  
15 which I was just referring, is based upon a configuration  
16 comprising a global packet switch network connecting mobile  
17 networks via intelligent gateways.

18 So what they are saying is the system is based  
19 on the configuration that puts the intelligent gateway --  
20 that is in blue -- between the network that is being visited  
21 and a packet switch network. And I am going to explain why  
22 that is important in a moment.

23 One point I want to make right at the outset,  
24 Your Honor, is there are two patents at issue in the case,  
25 as Your Honor is aware. The patents have both method claims

1 and system claims. This is a really important point. There  
2 are only system claims asserted in this case, no method  
3 claims.

4 I am going to explain in a moment why that is a  
5 critical point, and why as a consequence Mr. DiMatteo's  
6 presentation and description of the patents was inaccurate,  
7 in ways that are relevant to the claim construction issues  
8 before Your Honor.

9 Here, Your Honor, we have Figure 1 from the  
10 patent and Figure 3 from the patent. Those are the two  
11 figures in the patent -- there are only two that disclose  
12 the systems. I am going to explain that. That is very  
13 important. There are other figures in the patent. But  
14 there are only two that are disclosing the systems, the  
15 embodiments in the patent. Those are Figures 1 and Figures  
16 3.

17 As you can see, Your Honor, in Figure 1 on the  
18 left, you have again that intelligent gateway between a  
19 visiting network and a packet switch network. And on the  
20 right, Your Honor, you have multiple intelligent gateways.  
21 You see two there. And they connect, networks and packet  
22 switch network. They are in all cases placed between a  
23 packet switch network and another network.

24 Now, Mr. DiMatteo showed the Court only one  
25 figure. Actually, at one point, Figure 4 was shown just for

1 a moment. But he essentially showed the Court only one  
2 figure. That was Figure 2. The entire presentation that  
3 Your Honor heard was based on Figure 2. Figure 2 is not --  
4 and this is explicit out of the patent -- is not a depiction  
5 of the system claimed in the patent. It is instead, Your  
6 Honor -- and we highlighted the portions so Your Honor  
7 wouldn't have to take my word for it -- it is a call flow  
8 that is in accordance with the system of Figure 1.

9 Your Honor will recall, I showed Figure 1 and I  
10 said that was one of two system embodiments. There is  
11 Figure 1 on the left. Figure 2, which Mr. DiMatteo based  
12 his presentation on, is a call flow. It shows how the  
13 system of Figure 1 can be used, how a call can be routed  
14 through the system of Figure 1.

15 It is not a depiction of a system. And that  
16 will be very important as we go forward.

17 There are other call flows, Your Honor, in the  
18 patent. I just put them up here, Figure 4 and 5. These are  
19 call flows based on Figure 3. So again, Figure 1 is a  
20 system, call flow of Figure 2, and then there is Figure 3 is  
21 a system, and these are call flows of Figure 3.

22 If we go back just for one moment to Figure 2, I  
23 just want to correct something that Mr. DiMatteo said. And  
24 I am not an expert, either, so I wouldn't want somebody  
25 scrutinizing every single word on the technology. But there

1       were some important differences between his description and  
2       the patent that I just want to point out.

3               There are two ways that the patent says calls  
4       can be worked through the call flow of Figure 2, two ways.  
5       The first is, a call comes in and the mobile switch center,  
6       the MSC, holds the call. The call never goes anywhere else  
7       within that system. The call is held. Dialing sequence and  
8       only dialing sequence is sent to the intelligent gateway.  
9       We need to figure out how we are going to route this call.  
10      We send a query, it's called a data query in the patent. We  
11      send a data query to the intelligent gateway. That is No. 2  
12      there, Your Honor. And No. 3, there is a response, it  
13      provides information, and the call is routed by the MSC.

14             That is call redirection. That is what the  
15      patent refers to as call redirection. Call redirection is  
16      not when it flows around No. 7.

17             So that is one way. The call stays at the MSC,  
18      gets information from the intelligent gateway, and then is  
19      routed.

20             Another way is, in addition to the dialing  
21      sequence -- and these are separate things. Mr. DiMatteo  
22      made that clear and the patent makes it clear. There is  
23      dialing sequences on the one hand and the call itself on the  
24      other. The second way this works, the call and the dialing  
25      sequences are sent to the intelligent gateway. This gets a

1 little complicated. But that call is then held at the  
2 intelligent gateway. The intelligent gateway forms a new  
3 call. It makes that call, sends that new call to the MSC,  
4 which routes that to the other network. The connection is  
5 established. And then those two calls, just like a switch,  
6 are connected, a conference. And that's why that is in  
7 dashed lines, because it is actually not a call being  
8 routed. This new call that was created by the intelligent  
9 gateway is connected with the original call that allows the  
10 call to go through. They are just two different ways to do  
11 it.

12 So we move, as I mentioned, those are call flows  
13 that relate to Figure 3.

14 Let's look at intelligent gateway, Your Honor.  
15 I have some materials that I would like to walk through with  
16 you on that.

17 First, the key question for the intelligent  
18 gateway is whether or not it connects two networks. There  
19 are other subsidiary questions that I want to address. But  
20 that is, and that was clear from Mr. DiMatteo's presentation  
21 as well, the key question is whether the intelligent gateway  
22 must connect two networks.

23 I am going to show you, Your Honor, I hope, that  
24 it must, both based on its plain and ordinary meaning, how  
25 it's used in the patent, statements made in the foreign



1 prosecution -- I understand Your Honor has some skepticism  
2 with respect to those.

3 THE COURT: I do.

4 MR. KREVITT: And I am going to walk you through  
5 each of those, and in every turn they demonstrate that the  
6 intelligent gateway must connect two networks.

7 Here is the key, Your Honor. Mr. DiMatteo  
8 showed you only Figure 2. I want to emphasize that again,  
9 because Figure 2 doesn't show the other network. Figure 2  
10 relates to method claims. And because it's just talking  
11 about the call flow, it leaves out the elements that aren't  
12 necessary to explain the call flow. It leaves out other  
13 elements from Figure 1. But all of the claims here are  
14 system claims. That is why Mr. DiMatteo showed you Figure  
15 2, because it leaves out the packet switch network.

16 But when we look at the system embodiments,  
17 every single one, the intelligent gateway connects a packet  
18 switch network to another network, in every case without  
19 exception.

20 So that is the key issue that we are going to  
21 address.

22 As Your Honor is well aware, I am not going to  
23 take Your Honor through the case law --

24 THE COURT: No. Go ahead.

25 MR. KREVITT: Obviously, plain terms must be

1 given their plain and ordinary meaning.

2 THE COURT: Just move on.

3 MR. KREVITT: I am going to. I wanted to set  
4 this up. If you go back to the definitions, please, there  
5 are three definitions, there are many, many others. The  
6 term gateway has a plain and ordinary meaning. It connects  
7 two networks. There is no dispute on that question. I can  
8 represent to Your Honor that we went searching for a  
9 contrary definition and did not find it. I can represent to  
10 Your Honor that we put each of these three definitions in  
11 our opening brief, Starhome responded and did not dispute,  
12 did not challenge these, did not offer a contrary  
13 definition. Did not in any way take issue with the  
14 fundamental and dispositive proposition that gateway has a  
15 plain and ordinary meaning. It connects two networks.

16 If you go back to the definitions, just the  
17 first one, this is the IEEE Dictionary. It is from 1996.  
18 That was the dictionary that was in existence at the time of  
19 the patent. There was a revision later after the patent.  
20 So we all know this definition remains the same. That is  
21 why we have '96. A functional unit that interconnects a  
22 local area network with another network. Second definition:  
23 Dedicated computer that attaches two or more networks.

24 The other definitions are the same, Your Honor.

25 So there is no dispute. That is why I had that

1 law, that gateway had a plain and ordinary meaning. That  
2 question has not been disputed.

3 So we go to the next slide. So the question is,  
4 does the patent contain a disclaimer? Does the patent  
5 contain a contrary definition? Is there something in the  
6 patent that allows us to say, well, although gateway had a  
7 plain and ordinary meaning, we are going to give it a  
8 different meaning here? Your Honor, there isn't. It hasn't  
9 been suggested that there is. In fact, in every respect,  
10 the patent is consistent with its plain and ordinary meaning  
11 that existed at the time and exists today. I am going to  
12 walk Your Honor through that very quickly.

13 First, present invention. Not limited to a  
14 particular embodiment. We looked at this sentence a few  
15 moments ago. The present invention as described with an  
16 intelligent gateway connecting two networks. This system  
17 providing these services is based upon a configuration  
18 comprising a global packet switch network, that's one  
19 network, connecting mobile networks, those are other  
20 networks, via intelligent gateways.

21 That is the present invention.

22 We go on. The specification, which, as Mr.  
23 DiMatteo said, is virtually identical for both patents --  
24 when I say the specification, I am referring of course to  
25 both patents. The specification refers to intelligent

1 gateway just three times, other than the claims, Your Honor,  
2 other than the claims -- this term, of course, appears in  
3 the claims throughout -- but the specification refers to  
4 intelligent gateway just three times. Each and every one of  
5 those times it refers to an intelligent gateway as  
6 connecting two networks. And we have this here, Your Honor.  
7 The first we just looked at, of course. The second, which  
8 is referring to Figure 1, the first system, VPLMN 30, that  
9 is a network, may be coupled to a global packet switch  
10 network, another network, via a visited intelligent gateway.

11 The third time, Your Honor, same point, in  
12 System 100, that is referring to Figure 3, the second  
13 embodiment, the network which replaces the network 20 from  
14 the original embodiment of Figure 1 is coupled to a packet  
15 switch network via an intelligent gateway, a home  
16 intelligent gateway.

17 Three times it's mentioned, three times it's  
18 consistent, it connects two networks.

19 The figures, Your Honor -- and I would pause for  
20 a moment. At one point Mr. DiMatteo said we are relying on  
21 just one embodiment. As I hope will be very clear, that  
22 statement is incorrect. We are relying on every single  
23 system embodiment disclosed in this patent. The patent  
24 describes just two system embodiments. Those are at Figures  
25 1 and 3. We discussed that a moment ago. As Your Honor can

1 see, in both of those figures, the system embodiments in  
2 every embodiment in the patent, the intelligent gateway  
3 connects multiple networks, connects at least two networks.

4 If we move on, at Slide 16 and 17, Your Honor,  
5 we just put up Figure 1 and tied it, just so there would be  
6 no question at all, to the specific language of the  
7 specification, which makes clear, and we color-coordinated  
8 that to demonstrate to Your Honor that in every single  
9 embodiment, as described in the specification, as depicted  
10 in the figures, every system embodiment, the intelligent  
11 gateway connects multiple networks.

12 This is Figure 1 that we were looking at, then  
13 Figure 3.

14 The PCT application -- I know I am at risk of  
15 belaboring a point. But given how important it is, I want  
16 to make sure that this is very clear. Every embodiment in  
17 the patent, every system embodiment in the patent makes this  
18 clear, the PCT application that I referred to a moment ago  
19 incorporated by reference in the patent, intrinsic evidence,  
20 same thing. The service node, which is referred to in the  
21 PCT as a gateway, connects the green network with the yellow  
22 IP network. So the blue gateway, referred to again in the  
23 PCT as a service node, connects multiple gateways. Every  
24 embodiment, the PCT, everything consistent with the plain  
25 and ordinary meaning.

1           So far, I have not in any way strayed from the  
2 plain and ordinary meaning for every single embodiment in  
3 this patent, every single system embodiment in this patent.

4           So, Your Honor, what did Mr. DiMatteo rely  
5 entirely on? Figure 2. As I mentioned a moment ago, Figure  
6 2 is a call flow. It's a method of using the system of  
7 Figure 1.

8           THE COURT: Let me ask you this: Is that  
9 exactly a fair characterization, that he relied exclusively  
10 on the figure? Didn't he cite me to claim language?

11          MR. KREVITT: Your Honor, I am going to turn to  
12 the claim language. With respect to the description of the  
13 specification, he relied on only two things. One, Figure 2.  
14 And, two, a description of Figure 2 in the specification.  
15 The presentation was limited to Figure 2. Your Honor did  
16 not see, until I stood at this podium, Figure 1. Unless  
17 Your Honor --

18          THE COURT: In terms of this presentation, okay.

19          MR. KREVITT: Exactly, Your Honor. Nor did Your  
20 Honor see Figure 3, the two system embodiments.

21               I am going to turn to the claim language in a  
22 moment.

23               The only use --

24          THE COURT: Yes. We should be able to do this  
25 without reference to figures, shouldn't we?

1 MR. KREVITT: No, Your Honor. Here is why. I  
2 will explain. It is a very good question. With respect to  
3 intelligent gateway, every single claim simply says  
4 intelligent gateway. It doesn't say intelligent gateway  
5 that's connected to two networks. It doesn't say  
6 intelligent gateway that is not connected to two networks.  
7 We have a dispute. We are suggesting to Your Honor that  
8 that term must be construed consistent with its use in the  
9 patent and its plain and ordinary meaning. That's the  
10 dispute.

11 The claim language becomes relevant, Your Honor,  
12 only because Mr. DiMatteo is suggesting to Your Honor that  
13 there is a claim differentiation argument. I am going to  
14 address that. Mr. DiMatteo did not say the claim language  
15 itself suggests a particular construction. He simply said  
16 differentiation precludes my construction.

17 So this is Figure 2.

18 I want to turn for a moment to the foreign  
19 prosecution. If we can go to the next slide, the one after  
20 that, we are relying, Your Honor, on -- I am skipping a few  
21 slides because I want to first address Your Honor's  
22 skepticism.

23 THE COURT: Okay.

24 MR. KREVITT: The Federal Circuit has said, Your  
25 Honor, repeatedly, and we cite one case, Starhome cites

1 another, which I am going to address, has said repeatedly  
2 that foreign prosecutions can be relevant. In fact, in the  
3 Gillette case that we cite to Your Honor on these slides and  
4 in our brief, Chief Judge Rader, then just Judge Rader,  
5 considered the European prosecution, and found that the  
6 blatant admissions -- that is a quote -- the blatant  
7 admissions by the same party before the EPO on an  
8 identical -- near identical claim, it wasn't identical --  
9 near identical claim -- clearly supports the Court's  
10 holding.

11 Repeatedly, Your Honor, the Federal Circuit  
12 considers foreign prosecution.

13 THE COURT: But you stated, if I understood  
14 correctly, at the time, a few sentences ago, that the  
15 Federal Circuit has held that the trial judge "must"  
16 consider.

17 MR. KREVITT: Your Honor, the point I am making  
18 simply is, if there is a contrary statement, given that the  
19 Federal Circuit repeatedly considers foreign prosecution.  
20 And the times in which it has suggested some caution, I am  
21 going to address in a moment, relate to a different issue  
22 entirely. Given that the Federal Circuit has repeatedly,  
23 consistently, including in the cases cited by Starhome,  
24 considered foreign prosecution as relevant, that law  
25 suggests that it is appropriate for a District Court to



1       consider the foreign prosecution.

2               THE COURT:   Appropriate; not a requirement.

3               MR. KREVITT:   That's fair, Your Honor.   I  
4       apologize if I suggested more than that.   I am simply  
5       suggesting that under the case law it's appropriate for Your  
6       Honor to consider it, particularly when it is directly  
7       inconsistent with a claim construction being offered here.

8               THE COURT:   I guess context matters.

9               MR. KREVITT:   That is exactly right, Your Honor.

10              THE COURT:   I get your point.

11              MR. KREVITT:   I appreciate that clarification.  
12       I do want to say one thing before we get down bogged down on  
13       the foreign prosecution.   Hopefully it will be very clear  
14       from the plain and ordinary meaning, every single dictionary  
15       at the time, the specification, every single embodiment in  
16       this patent, that we don't need the foreign prosecution.   I  
17       am simply going to now offer the foreign prosecution to show  
18       that at the time that Starhome was prosecuting these  
19       patents, at the exact same time, prosecuting the identical  
20       patent in Europe, they took a position directly contrary to  
21       the position here.

22              I don't need it, Your Honor.   I want to be  
23       clear.   I don't want to carry a burden that I don't need  
24       with the foreign prosecution.

25              It is our contention, Your Honor, that the Court

1     should consider the foreign prosecution. In Starhome's  
2     brief, they cite a case, the AIA case, that suggests a  
3     District Court should exercise some caution in considering  
4     foreign prosecution. Mr. DiMatteo repeated that to the  
5     Court here this morning.

6             What the Federal Circuit has said is that there  
7     are different laws in Europe, obviously, different questions  
8     as to patentability, and that the Court needs to be real  
9     careful before it says, well, the patent was found invalid  
10    there, so we are going to apply that here, or that is  
11    invalidating prior art, because there are different laws.  
12    There is no case, none, that says a District Court should  
13    exercise caution when applying a description of an  
14    inventor's invention that is contrary to a point that's  
15    being offered to a District Court.

16            So we go back to the foreign prosecution -- I  
17    will hopefully do this quickly. During prosecution -- and  
18    Your Honor has the whole copy, Mr. DiMatteo showed it, we  
19    just got a snippet -- Starhome took a position directly  
20    contrary, that a gateway connects networks. And we have a  
21    portion here, there is no gateway within the meaning of the  
22    present application -- they are distinguishing prior art,  
23    excuse me -- within the meaning of the present application  
24    as identical to patents we are talking about here today,  
25    because no access to another network is even hinted at.

1 Contrary to the examiner's assertion, the SCP is not a  
2 gateway within the meaning of the present application  
3 because a gateway provides access to an external environment  
4 beyond the immediate network.

5 If we go to the next slide, Your Honor, to the  
6 extent there is any question about this, the applicant,  
7 Starhome, went on to say, the examiner is referred  
8 specifically to Page 4, Lines 19 and 20 of the present  
9 application, where the term intelligent gateway is defined  
10 in this way.

11 Not just described, "defined" in this way.

12 So Starhome is telling the European Patent  
13 Office how it defines the term gateway. And this gets a  
14 little busy, I confess, this slide. But at the bottom left,  
15 Your Honor, Page 4, Lines 19 to 20, this is on Slide 21  
16 before Your Honor, and this definition of gateway, which  
17 Starhome itself characterizes as a definition, says, the  
18 system providing these services is based upon a  
19 configuration comprising a global packet switch network,  
20 connecting mobile networks, via intelligent gateways.

21 That is from the European application. That  
22 language may sound familiar to Your Honor, because I read it  
23 a few moments ago. The identical definition, verbatim, word  
24 for word, appears in Starhome's patents. And that's at the  
25 bottom right, Your Honor. That is the definition of the

1 invention. That was the description of the present  
2 invention that I described earlier. Intelligent gateway  
3 connects multiple networks.

4 If we go on to the next slide, I have addressed  
5 this, Your Honor, I had intended to do this second, this is  
6 the question of whether the Court should consider this. We  
7 have discussed that. Second, in Starhome's brief, Starhome  
8 tries to explain away what happened during prosecution, it  
9 is not really what Roamware says happened.

10 I submit Your Honor can read it, will read it  
11 and will make up the Court's mind, and we don't need to  
12 spend a lot of time on it. I would simply point this out.  
13 In Starhome's brief, this is a quote, they explain the  
14 applicant's statement by quoting in this way. Quote: "A  
15 gateway provides access to an external network beyond the  
16 immediate network by knowing about the environment beyond  
17 the local network."

18 Mr. DiMatteo said something very similar. It  
19 doesn't have to connect to a network. It just has to have  
20 information about the other network. That is not what the  
21 foreign application says. Again, I submit to Your Honor,  
22 you can read it, how Starhome gets there -- and we showed  
23 this -- is they literally pluck two sentence fragments from  
24 different paragraphs on different pages and string them  
25 together in one sentence and characterize it as a quote.

1           That you see at Starhome reply brief F-5. Only  
2     by doing that, by cherry-picking something from Page 2 and  
3     combining it with something from Page 3, sentence fragments,  
4     can you possibly make the argument that Starhome is making  
5     today. Applicants' actual statements, which we have  
6     discussed, which Your Honor has, could not be clearer. They  
7     are described as a definition. They make very clear that  
8     the gateway must connect two networks.

9           So what is left is what Your Honor not  
10    unreasonably asked about, the claim language. The claim  
11    again, Your Honor, does not answer the question as to what  
12    an intelligent gateway is, and neither party says it does.  
13    Mr. DiMatteo again is suggesting to the Court that claim  
14    differentiation says that it can't be what I am representing  
15    to the Court. And that is because some of the claims add a  
16    packet switch network. So some claims just claim an  
17    intelligent gateway. And I put an example up here. This is  
18    actually not even an asserted claim. But other claims add a  
19    packet switch network and then say the intelligent gateway  
20    is connected to that packet switch network. Their  
21    suggestion is that in the claims where it does not say that  
22    the intelligent gateway is connected to a packet switch  
23    network, then those claims, it need not be connected to  
24    another network.

25           Your Honor knows the law better than anyone in

1     this room and knows that that does not work. This claim  
2     adds a new element, a packet switch network. The packet  
3     switch network is not required in the claims in which it  
4     does not appear, obviously.

5             In the claims in which it does appear, it is a  
6     new element. In the claims they go on to say how the  
7     intelligent gateway will be connected to that packet switch  
8     network. It does not change the plain and ordinary meaning  
9     of the term intelligent gateway as requiring connection  
10    between two networks. It could just be a different kind of  
11    network altogether. It doesn't have to be a packet switch  
12    network. These claims add a particular kind of network to  
13    which the intelligent gateway also will be attached. That  
14    is what these claims are. That is why there is no claim  
15    differentiation, as a matter of law, it adds a new element,  
16    and then simply describes how that new element is connected  
17    to the intelligent gateway.

18            That is the claim differentiation argument.

19            That is what we have on intelligent gateway.

20            Obviously, before moving on, I am happy to  
21    address any questions that the Court has on intelligent  
22    gateway, if any.

23            THE COURT: No. I think you have answered any.

24            MR. KREVITT: Routing center, Your Honor. A few  
25    things happened during Mr. DiMatteo's presentation that I

1 think are interesting and will narrow the dispute.

2 First, I want to start with what Mr. DiMatteo  
3 said last. The chief dispute between the parties has always  
4 been, until last night, has always been whether a routing  
5 center of Claim 10 is limited to a mobile switch center.  
6 It's a simple question.

7 Mr. DiMatteo candidly conceded today that there  
8 is nothing in the claims that would suggest that. When you  
9 look at Claim 10, you could not possibly conclude that that  
10 claim is limited to a mobile switch center. The term  
11 doesn't appear in the claim. There is nothing in the claim  
12 that could possibly suggest that. Of course, that's  
13 correct.

14 So what did we do?

15 Plaintiffs have urged this Court to construe the  
16 term as limited to a mobile switch center. They admit the  
17 claim itself doesn't require it, but for reasons Mr.  
18 DiMatteo explained and I will address, they believe  
19 nonetheless the Court should limit it to a mobile switch  
20 center. For the issue to be joined, for there to not be  
21 ships passing in the night, as so often happens in claim  
22 construction, we added at the end of our construction  
23 "including but not limited to a mobile switch center." We  
24 wanted to make clear that we are not saying that that  
25 element couldn't be satisfied by a mobile switch center. We

1 are simply saying it is not limited to a mobile switch  
2 center.

3 Mr. DiMatteo stood here and told you that's  
4 improper, it's like saying it's an apple but it's not an  
5 apple or something.

6 The only thing we were saying, to compare apples  
7 to apples, is, it is an apple, it could include a Fuji  
8 apple, but it is not limited to a Fuji apple. That is the  
9 only question before the Court. Is a routing center of  
10 Claim 10, which does not contain the word mobile switch  
11 center, limited to mobile switch center?

12 I have to pause, though, Your Honor, because, as  
13 Mr. DiMatteo mentioned, last night, they made an addition,  
14 and we inserted that in plaintiff's construction -- we have  
15 had, obviously, no opportunity to brief the issue to the  
16 Court. We considered it our obligation nonetheless to  
17 prepare to discuss the issue. And that's bracketed under  
18 Plaintiff's Construction.

19 So their construction had said, just as ours  
20 says, that the routing center routes dialing sequences.  
21 They have now changed that to the routing center routes  
22 calls with dialing sequences. So we now have two issues  
23 that the Court is confronted with. The first is the one  
24 that the parties briefed. Is a routing center limited to a  
25 mobile switch center? Are they synonymous?



1           The second issue which we have to address is,  
2           does the routing center of Claim 10 route calls or does it  
3           route dialing sequences? That is the new issue that has  
4           been presented by the revision to Starhome's claim  
5           construction.

6           Starhome characterized that in the e-mail they  
7           sent last night as a small change. Mr. DiMatteo  
8           characterized it that way to Your Honor this morning. It is  
9           no small change, as will be very clear to Your Honor. It is  
10          quite a significant change.

11          So let's look at that issue first, because I  
12          think we can dispense with that one more easily.

13          So does a routing center route calls or does a  
14          routing center route dialing sequences? That is the  
15          question. The claim answers this one clearly, directly,  
16          unequivocally. The highlighted portion is the claim element  
17          that we are talking about, Your Honor. A routing center in  
18          said first mobile telephone network, said routing center  
19          adapted to route said dialing sequence.

20          It is hard to see how that could be clearer,  
21          that the routing center routes dialing sequence. It does  
22          not route calls. The claim says absolutely nothing about  
23          routing calls. It routes dialing sequence.

24          In fact, as we discussed earlier, Mr. DiMatteo  
25          did and then I did, Your Honor, with that call flow of

1     Figure 2, you may recall, when the network gets a call, it  
2     could do one of two things. It can route just the dialing  
3     sequence, or it can route the call and the dialing sequence.  
4     Everyone agrees on that.

5             And what Claim 10 is saying, because it's an  
6     independent claim, it's starting at the broadest level, is  
7     that the routing center routes dialing sequence. It is  
8     right there, Your Honor. It does not route a call.

9             Claim differentiation further answers the  
10    question. In Claim 10 we have a routing center that routes  
11    dialing sequence. Claim 13 adds a mobile switch center that  
12    is adapted to route a call. The mobile switch center routes  
13    a call. And it does so in Claim 13. Nothing does it in  
14    Claim 10. The routing center routes a dialing sequence in  
15    Claim 10. The mobile switch center routes a call in Claim  
16    13. Again, Your Honor, with respect, I don't think the  
17    claims could be clearer on that question.

18            If we move on to the second issue -- the first  
19    issue was, does the routing center route calls or does the  
20    routing center route dialing sequences? And the claim  
21    answers that question.

22            Incidentally, before we move on, Mr. DiMatteo,  
23    in describing those two ways of using the system, one is  
24    just routing the dialing sequence and the other is routing a  
25    call and a dialing sequence, said to Your Honor, So as a

1 consequence, the routing center must be able to do both.  
2 That's not true. That's not how it works. We have an  
3 embodiment that discloses two ways of doing something, and  
4 we have an independent claim that refers to routing dialing  
5 sequences. That is because in every case the dialing  
6 sequence is routed. Sometimes a call will also be routed.  
7 Sometimes it is not. So it is very clear that all that is  
8 required by Claim 10 is that the dialing sequence be routed  
9 by the routing center.

10 That is first issue, does the routing center  
11 route calls or dialing sequence? And the claims answer that  
12 question clearly.

13 The second question, Your Honor, is the question  
14 that was the subject of most of Mr. DiMatteo's presentation  
15 and is the subject of the briefing that has been presented  
16 to Your Honor. That is, is a routing center of Claim 10  
17 limited to a mobile switch center? Mr. DiMatteo was very  
18 candid in another area in ways that I think answered this  
19 question clearly. He explained that the routing center may  
20 be the same as the mobile switch center. And I wrote down  
21 each one of his descriptions. It might be a slight  
22 variation. It might be bigger or broader, but not by much.  
23 We don't know.

24 Mr. DiMatteo said twice, We don't know.

25 And we don't. What we do know is that the

1 routing center of Claim 10 is not limited to a mobile switch  
2 center. There is nothing in the claim that would suggest  
3 that it is.

4 As Your Honor is well aware from these  
5 discussions, mobile switch center is described in the  
6 patents, in the preferred embodiments, true. No dispute.

7 If you go back, it is described in the preferred  
8 embodiments. As the Court knows very, very well, though,  
9 you do not limit claims to the preferred embodiment absent a  
10 clear, unequivocal, unambiguous reason to do so. None  
11 exists. None has been suggested. So mobile switch center  
12 is an embodiment. The claim is routing center. It cannot  
13 be limited to a mobile switch center. Just as a matter of  
14 claim construction, it does not work.

15 If we go on, it's demonstrated by the other  
16 claims in the patents, Your Honor. These patents use  
17 "routing center" in some claims, Claim 10, for example, the  
18 claim on which we are focused, and "mobile switch center" in  
19 other claims. These claims have different claim meaning.  
20 The law is clear, different claim terms are presumed to have  
21 different claim scope, different meaning. In the same  
22 patent, we have routing center in some claims, mobile switch  
23 center in other claims. They cannot be synonymous.

24 We have, Your Honor, the two different terms in  
25 the same claim. Routing center and mobile switch center

1 both appear in numerous claims together. They cannot, as a  
2 matter of law, therefore, be considered synonymous.

3 We move on. Here is the real point, I think,  
4 Your Honor, that answers the question. It's the prosecution  
5 to which Mr. DiMatteo referred. We do have that here, Your  
6 Honor, because it's really important. So the original claim  
7 is the top callout. A mobile switch center in said mobile  
8 network, said mobile switch center adapted to do things.

9 The original claim that we are talking about  
10 claimed a mobile switch center. That was in the original  
11 claim. The very limitation that Starhome is seeking to have  
12 Your Honor add was in the original claim.

13 The applicants during prosecution amended the  
14 claim. They eliminated mobile switch center. That's not  
15 our creation, Your Honor. That is right out of the  
16 application. They eliminated mobile switch center and they  
17 added routing center. They are asking the Court to do  
18 exactly the opposite, to reverse that.

19 If we go to the next slide, this probably was  
20 unnecessary. But we put on the right what Starhome's  
21 current construction would do. You can see, it is literally  
22 a reversal of what they did during prosecution. Routing  
23 center was added. Mobile switch center was eliminated.  
24 They are asking the Court to literally undo that and put  
25 mobile switch center back in Claim 10 and eliminate routing

1 center. Or, if you go back, at least limit routing center  
2 to mobile switch center.

3 We have one case, Your Honor, there are many,  
4 that we cited at the bottom of Slide 33. This, with  
5 respect, is a quote from the case as opposed to me advising  
6 the Court what it is permitted to do. The quote is out of  
7 the Federal Circuit: Courts are not permitted to read back  
8 into the claim limitations which were originally there and  
9 were removed during prosecution of the application through  
10 the Patent Office.

11 That just makes sense. There is a fairness  
12 question. There is a notice question. They changed the  
13 claim. They can't reasonably ask Your Honor to change it  
14 back.

15 The change that was made, Your Honor, in the  
16 September 22, 2004 amendment to Claim 10 to which I referred  
17 a moment ago where they changed mobile switch center to  
18 routing center. At the exact same time, in the exact same  
19 amendment, they added other claims and included mobile  
20 switch center. So you have Starhome prosecuting one patent  
21 and revising claims to take out mobile switch center and put  
22 in routing center and to file new claims that are limited to  
23 mobile switch center.

24 You can imagine, Your Honor, if I stood here as  
25 a defendant and asked Your Honor to limit the claims to

1 mobile switch center because I didn't have one, for example,  
2 with respect, it would be a laughable point. They changed  
3 it to remove mobile switch center. I would not have any  
4 standing to suggest to Your Honor, well, let's ignore the  
5 amendment and go back to how they originally had it.

6 That doesn't work. You see that they were  
7 prosecuting claims at the same time that had those two  
8 different terms.

9 Routing center is broader. It is not limited to  
10 mobile switch center. Mr. DiMatteo said he does not know  
11 why the change was made. I think we could guess, it was  
12 made to broaden the claim term. That's what people do every  
13 single day.

14 We have this slide, Your Honor, it is described  
15 in our briefing, there are other types of devices, network  
16 elements, that would satisfy the routing center element that  
17 are not mobile switch centers. Those would be covered by  
18 the patent, those would, if we were in an infringement  
19 context, be infringing at least that element.

20 Unless the Court is interested, I won't take you  
21 through those elements. There they are. There is no  
22 dispute as to them. One is described in the patent, by the  
23 way. These are elements of which Starhome is aware. One is  
24 described in the patent. Another is described in the  
25 prosecution. So these are both network elements of which

1 Starhome was aware during the prosecution of the claims.

2 At one point in the briefing, although not  
3 today, so I won't spend a lot of time on it, Starhome  
4 suggests that during prosecution Starhome distinguished  
5 prior art on the grounds that it didn't have a mobile switch  
6 center and therefore that shows they were thinking about  
7 this claim as limited to a mobile switch center. It's  
8 wrong.

9 The rejection was to the original claim that did  
10 have a mobile switch center. The examiner said, this prior  
11 art shows a mobile switch center. Starhome simply responded  
12 and said, no, it doesn't. It doesn't have a mobile switch  
13 center. Obviously, that is not an admission with respect to  
14 the claim scope.

15 So routing center cannot be limited to mobile  
16 switch center.

17 Now, Mr. DiMatteo said to the Court that we are  
18 asking for a broader construction of routing center because  
19 we have got some prior art, some secret prior art that we  
20 have not disclosed. That's not true. We have disclosed the  
21 prior art of which we are aware. We will continue to do so.  
22 That is not true.

23 Mr. DiMatteo, I think, knows why this issue is  
24 so important. And that's because of the next claim. I am  
25 going to now walk you through that.



1           Mr. DiMatteo put these terms together, routing  
2 center and mobile switch center. Those were all addressed  
3 together. They are, in fact, Your Honor -- Your Honor may  
4 not be aware of this -- they are different claim terms that  
5 appear in different claims. I explained that. Claim 10 has  
6 routing center. Claim 13 has mobile switch center. But  
7 Claim 13 said mobile switch center. There is no antecedent  
8 basis for that term. I am going to explain that to the  
9 Court. Obviously, the Court is familiar with that concept.  
10 I am going to explain why Claim 13 lacks an antecedent  
11 basis. There is no dispute on that. Just as a threshold  
12 matter, Claim 13 at the bottom right says said mobile switch  
13 center. It depends from Claim 10. Claim 10 is the routing  
14 center claim. It does not have the term mobile switch  
15 center.

16           So although this wasn't explained to the Court,  
17 if Starhome can get Claim 10 synonymous, the routing center  
18 of Claim 10 synonymous with mobile switch center, all of a  
19 sudden we might have some antecedent basis for Claim 13.  
20 That is not how it works.

21           Claim 10 is a different element, routing center.  
22 Claim 13, which was not changed during prosecution, there is  
23 no antecedent for said mobile switch center. It cannot, I  
24 submit, under the case law, and I will explain this -- be  
25 corrected by the Court, that that claim as a consequence

1 lacks antecedent basis. That is the game, Your Honor. That  
2 is why Starhome wants routing center to be synonymous with  
3 mobile switch center.

4 They stood here and told you, it might be a  
5 little broader, we don't know. We don't know why the change  
6 was made. But, come on, it should be limited essentially to  
7 mobile switch center. And that's why. Because if they can  
8 get that, which they can't, but if they can get that, then  
9 maybe there is some antecedent basis for Claim 13.

10 Let's talk about Claim 13, which Mr. DiMatteo  
11 did not address in this context.

12 If we go to the next slide. Starhome, this is  
13 what I was saying, seeks to cure the lack of antecedent  
14 basis for said mobile switch center of Claim 13 by defining  
15 it. There is a circularity here, Your Honor, that will be  
16 very clear in a moment. They define said mobile switch  
17 center of Claim 13 as the routing center of Claim 10. They  
18 need to marry these terms. They don't care what Your Honor  
19 does. You can call them both routing center. You can call  
20 them both mobile switch center. They don't care.

21 What they need is those to be the same, because  
22 then they have got antecedent basis for Claim 13.

23 If you look at their constructions, Your Honor,  
24 to state them, we respectfully submit, demonstrates that  
25 they make no sense.

1           For Claim 10, they tell you that the routing  
2           center means mobile switch center. We talked about that a  
3           few moments ago. But for Claim 13, they tell you that  
4           mobile switch center means the routing center of Claim 10.  
5           Take whichever one works for them, Your Honor, because  
6           again, they just need the terms to be the same. It doesn't  
7           work that way. Claim 13 is a routing center. It performs  
8           some functions -- excuse me. Claim 10 is a routing center.  
9           It performs some functions. Claim 13 is an entirely  
10          different element, mobile switch center, and it performs  
11          different functions.

12                 Here, Your Honor, is why the small change that  
13          Mr. DiMatteo described, that they sent us last night, the  
14          small change, is so significant. Because remember, the  
15          routing center of Claim 10 routes dialing sequences. It  
16          does not route calls. The claim itself makes that clear. I  
17          hope I demonstrated that to the Court. The claim itself  
18          could not clearer. It routes dialing sequences, not calls.

19                 Claim 13, if we go back to Claim 13, so that I  
20          can be clear, right there at the bottom, Your Honor, you  
21          will see that the mobile switch center routes calls.  
22          Different functions. We are not just calling the same  
23          element a different name. Claim 10, we have a routing  
24          center that does something, it routes dialing sequences.  
25          Claim 13, we have a mobile switch center that does something

1       entirely different. It routes calls.

2               How do they square that? They square that by  
3       changing the function of Claim 10. If we go back to the  
4       first slide that has our constructions of Claim 10 --  
5       that's okay. I am skipping around. It's not your fault.

6               This is Slide 27.

7               So here again, Your Honor, what they are trying  
8       to do is sand away all these differences, so that they can  
9       marry these elements. So, remember, Claim 10, the claim  
10      itself, is a routing center to route dialing sequences.  
11      Claim 13, mobile switch center to route calls.

12              So what did they suggest last night? What is  
13      the small change that they suggest to the Court today?

14              Let's define routing center of Claim 10, the  
15      thing that routes really only dialing sequences, let's say  
16      that routes calls, because if that routes calls, well, the  
17      mobile switch center also routes calls, now we have got the  
18      same thing doing the same thing, so we are all set for  
19      antecedent basis.

20              That small change, Your Honor, is to deal with  
21      the fact that Claim 10 has one element that does one thing  
22      and Claim 13 has an entirely different element is that does  
23      an entirely different thing. That is what the small change  
24      is all about.

25              If we go back to Claim 13 and move on -- that's

1     what we have here, Your Honor, about halfway through, the  
2     elements are not synonymous because they require different  
3     functions. And this now, at the risk of being repetitive,  
4     routing center routes dialing sequences to the intelligent  
5     gateway. And the mobile switch center routes calls to a  
6     destination number. By the way, they perform a different  
7     function with a different object. The routing center routes  
8     the dialing sequence to the gateway. The mobile switch  
9     center routes the call to the destination number.

10           If we go to the next slide. Let's talk about  
11     antecedent basis. We have now set that up, I hope. Can the  
12     antecedent basis be corrected? There clearly is an absence  
13     of antecedent basis in these claims.

14           The courts have said, Your Honor, the Federal  
15     Circuit has said that an antecedent basis may be corrected  
16     by the District Court only, and that's -- we put it on two  
17     lines, Your Honor, to break that up for ease -- that is a  
18     quote from the "only" to the period at the end of claims.  
19     Only if the correction is not subject to reasonable debate  
20     based on consideration of the claim language in the spec  
21     and, two, the prosecution history does not suggest a  
22     different interpretation of the claims.

23           We respectfully submit to Your Honor that  
24     neither requirement is satisfied here, not close.

25           The correction, of course, is subject to

1 reasonable debate given the patent's use of these different  
2 terms to perform different functions throughout. They  
3 appear in different claims. There can be no question that  
4 there is at least reasonable debate. And equally important,  
5 Your Honor, the amendments made during prosecution -- I know  
6 we have covered a lot of ground since we had the prosecution  
7 up, but, remember, they changed -- the amendments made  
8 during prosecution confirm that the term routing center was  
9 intended to have a different meaning than mobile switch  
10 center.

11 You can't confirm that any more than when you  
12 take out one and replace it with another.

13 If they are not intended to have different  
14 meaning, nobody takes that step.

15 I didn't know what Starhome intended in its  
16 presentation today. So we looked at the only case, they  
17 cite one case, Your Honor, for antecedent basis in their  
18 brief. It is an unreported case. In that case, there was  
19 only one possible understanding. The first term said upper  
20 seating area, and then it said below, said seating surface.  
21 There was never another seating anything. There was no  
22 dispute as to what was claimed there.

23 That would have satisfied both of these two  
24 requirements. But that's what that case -- that is out of  
25 Starhome's brief, the unreported case.

1                   So that's what we have on routing center and  
2 mobile switch center. They are different terms.

3                   And those are the issues relating to both those  
4 terms.

5                   THE COURT: All right. Thank you, counsel.  
6 Let's get a reply.

7                   MR. DiMATTEO: I will be very brief. I will try  
8 to be brief.

9                   Concerning intelligent gateway, the defendants  
10 make three arguments, as anticipated. Their first argument  
11 to Your Honor is the specification can only be read one way,  
12 that the only invention disclosed is one where the  
13 intelligent gateway is coupled both to the mobile switch  
14 center and a packet switch network, these two separate  
15 networks that the specification does talk about. But they  
16 want only the invention disclosed is that.

17                   The Federal Circuit is littered with denials of  
18 that approach and is very cautious. I think I can count on  
19 only one hand, on three fingers, the number of times that  
20 the Federal Circuit has accepted that defense. And it's  
21 only in exceptional cases where the specification is very  
22 clear that their invention is only this and it's not that.  
23 The Boston Scientific/SciMed case, the catheter case, is the  
24 classic example of that. That is the rare event.

25                   What is clear in this case is that this Court

1 cannot apply that law to this specification and these claims  
2 because this specification doesn't say that the only  
3 invention we have is an intelligent gateway that's coupled  
4 to a mobile network and a packet switch network.

5 Why? How do we know that? We can take a look  
6 at the specification itself. We can take a look at Figure  
7 1, which Roamware talks about, Column 2, Lines 42 to 32  
8 (sic). That is No. 46. This is Figure 1. Defendants' 22.

9 A general schematic illustration of a system for  
10 providing roaming services, according to some embodiments of  
11 the present invention -- not all, not the only, some  
12 embodiments, it may comprise the VPL -- I hate the industry  
13 acronyms -- the visited network 30 may be coupled to a  
14 global packet switch network 22. It doesn't say it must.  
15 It doesn't say our invention is an intelligent gateway  
16 coupled. It says it may.

17 Now, when I talked about Figure 2, which goes  
18 through the elements which are necessary for the claims --  
19 can you show me 47.

20 The specification is clear, and I am reading on  
21 the right, Your Honor, this is Column 3, Lines 23 to 27,  
22 Reference is now made to Figure 2, which illustrates the  
23 call flow from a roamer of Figure 1 according to some  
24 embodiments of the present invention. Some embodiments.  
25 This is an embodiment where the intelligent gateway does not



1     need to be connected to any other network or any packet  
2     network.

3             The entire invention is being described as an  
4     intelligent gateway communicating only with the mobile  
5     network.

6             That is the embodiment described in Figure 2.  
7     That's the embodiment claimed in the patents that we are  
8     asserting in this case.

9             The defendants then turn to the definition of  
10    gateway, which we thought they would. And again, if I can  
11    have 33. In their opening brief, It's universally  
12    understood the five necessary translations for two different  
13    networks. And they cite to Tanenbaum, Necessary  
14    Translation. That's what a gateway does. It translates  
15    something that one network doesn't understand to something  
16    it will understand. A gateway is that translating function.

17            Go back to Figure 2, please.

18            As we described over and over, the intelligent  
19    gateway translates a dialing sequence that this visiting  
20    network doesn't understand into a sequence that the network  
21    does understand.

22            That's the translating function. The two  
23    networks, conceptually, Your Honor, it's this roamer, like  
24    me in Germany, is using a dialing sequence of a foreign  
25    network that the visiting network doesn't understand. And

1 the intelligent gateway translates those foreign dialing  
2 sequences into one that it would understand.

3 So that's the gateway function. This  
4 intelligent gateway has to translate the dialing sequence of  
5 a roamer that is not recognized in Germany into a language  
6 that the roaming network can translate. That's exactly what  
7 the claims tell us the intelligent gateway does.

8 Can we have No. 30.

9 On the left here is Claim 10. It says that the  
10 intelligent gateway is adapted to translate a dialing  
11 sequence, and then with knowledge of the home network, into  
12 the first visited mobile network.

13 So the two networks are the home network, in  
14 other words, the dialing that I use at home, and the foreign  
15 network that I am trying to complete my call in. And the  
16 gateway is literally translating, performing its translating  
17 function by translating my dialing sequences into a sequence  
18 that my visiting network can recognize.

19 THE COURT: So you and the defendant, as  
20 asserted by counsel, agree as to the understanding, the  
21 meaning of the term gateway.

22 MR. DiMATTEO: Yes. The term gateway has to  
23 provide a translation function.

24 THE COURT: It's the identification of the  
25 different networks that are being connected where you

1 disagree.

2 MR. DiMATTEO: Not only does it have to  
3 translate. It has to be physically connected to two  
4 different networks.

5 THE COURT: Yes. The translation doesn't seem  
6 to be so much the issue here. It's the latter.

7 MR. DiMATTEO: Right. They are trying to even  
8 narrow further, a gateway not only has to be a translator  
9 between two different network protocols, or network dialing  
10 sequence, it must be physically coupled to two different  
11 networks.

12 THE COURT: Well, the definitions that you  
13 appear to agree upon, at least as outlined in defendants'  
14 presentation from the various dictionaries cited, would  
15 suggest two different networks. You say one is the home  
16 network, and the foreign network. They say, no, don't look  
17 at the home network. It must be some other network, I  
18 think.

19 MR. DiMATTEO: Let me be clear on the point.  
20 There are various layers of definitions.

21 THE COURT: Is that right? Am I  
22 mischaracterizing? I am asking defense counsel.

23 MR. KREVITT: I think you have it right, Your  
24 Honor. I would probably like an opportunity to make just --

25 THE COURT: No, I am not going to give you an

1 opportunity to make any further points. Do I have it right  
2 in terms of my understanding of where the difference lies?

3 MR. KREVITT: Then I must --

4 THE COURT: Make it quick, counsel.

5 MR. KREVITT: Very quickly. I will do it from  
6 here.

7 Mr. DiMatteo took a portion of our brief that  
8 says translation. We shouldn't be talking about lawyer  
9 argument in the briefs. The definitions make very clear  
10 that the gateway, that the term gateway must connect two  
11 networks. Otherwise, it could have simply said an  
12 intelligent computer. A gateway must connect two networks.

13 THE COURT: I get that, counsel. My question to  
14 you is where does the difference lie as to the  
15 identification of the networks that are being connected?

16 MR. KREVITT: No, Your Honor. It is Starhome's  
17 view that a gateway can be connected to only one network.

18 THE COURT: No, I don't think that is what Mr.  
19 DiMatteo just said. He said that the home phone is its own  
20 network. That is a network. And it's connected to the  
21 foreign network. That's what he just said. That's what I  
22 understand the plaintiff's position to be.

23 MR. KREVITT: I understand, Your Honor. That is  
24 different than what has ever been described in the briefs.

25 THE COURT: Were you listening to what he just

1       said?

2                   MR. KREVITT: I did, Your Honor. I didn't  
3 understand it that way. They are now saying that the --

4                   THE COURT: Have I correctly characterized your  
5 position?

6                   MR. DiMATTEO: Yes, Your Honor. Basically, when  
7 I am in Germany with my cellphone, I am using a dialing  
8 sequence of my home network.

9                   THE COURT: That's what I picked up on, counsel.  
10 Go ahead.

11                   MR. KREVITT: The gateway must sit between two  
12 networks. That is our contention, Your Honor. I believe --  
13 and, of course, Mr. DiMatteo will speak for Starhome -- it  
14 is their contention that although there may be two networks,  
15 his phone may be a network, that the gateway need not sit  
16 between two networks. The term gateway in every definition,  
17 Your Honor, requires it to connect, the gateway, to connect  
18 two networks. Every definition says it, Your Honor. The  
19 patent says it every single time. Every figure shows it.  
20 The gateway must connect two networks. Every instance in  
21 which the specification describes it, it describes it that  
22 way. Every single figure that shows the system shows it  
23 that way. Every single definition we showed Your Honor  
24 shows that. The gateway must sit between and connect two  
25 networks.

1           He is talking about his phone network, home  
2           network, there may be all kinds of networks. The dispute  
3           between the parties is whether the gateway must sit between  
4           and connect two networks, or whether it could -- and they  
5           keep showing you Figure 2. If you look at Figure 2 --

6           THE COURT: Is it the case that you really don't  
7           agree as to the definition of gateway? Because I thought  
8           there was agreement, at least I thought for a moment, and I  
9           am looking at your Slide 11, where you have set forth three  
10          dictionary definitions. Both counsel can take a look at  
11          that. Maybe we could put it up, and see for a moment if  
12          there is really agreement, because I think you are saying  
13          something different than what is being asserted here.

14          Take a look at that, Mr. DiMatteo.

15          MR. DiMATTEO: I have, Your Honor.

16          THE COURT: Do you agree that these dictionaries  
17          correctly set out what is understood by a POSA to be the  
18          meaning of gateway?

19          MR. DiMATTEO: These dictionary definitions  
20          demonstrate that there are a lot of different flavors of  
21          gateways. I want to direct your attention to the Tanenbaum  
22          reference. This is very eloquent when you think about it.  
23          People connected to one network often want to communicate  
24          with people attached to a different one. This desire  
25          requires connecting two different and frequently

1 incompatible networks, sometimes by using machines called  
2 gateways to make the connection and provide the necessary  
3 translation both in terms of hardware and software.

4 Okay. So here I have a person, me, in Germany,  
5 trying to communicate using my home network dialing sequence  
6 with --

7 THE COURT: Here is the thing. Forgive me for  
8 interrupting. I think -- and counsel can speak for  
9 himself -- that the problem that, one of the problems he has  
10 with Figure 2 is that it doesn't show your home network  
11 39 -- I am sorry, it doesn't show the intelligent gateway 7  
12 standing between your home network 39 and the, I guess  
13 the --

14 MR. DiMATTEO: Can we go back to Figure 2.

15 THE COURT: -- and another network.

16 MR. KREVITT: You have got it exactly right.  
17 The definition of gateway is it must connect two networks.  
18 That's why on Figure 1, the system claim, it shows it  
19 connecting two networks. On Figure 3, the system claims,  
20 and system embodiments, it shows it connecting to the packet  
21 switch network. Otherwise, it could have been referred to  
22 as an intelligent computer. If all it was going to do is  
23 provide some functionality as described by plaintiffs, it  
24 could be called anything. It is a gateway.

25 THE COURT: Mr. DiMatteo, could you address that

1 position?

2 MR. DiMATTEO: Certainly. The debate, Your  
3 Honor, is over the word network, what networks, what two  
4 networks, are we talking about? The defendants want the two  
5 networks to be the mobile switch center and the telephone  
6 network and some other network, a packet switch network.  
7 The Internet is the classic example. They want to limit the  
8 word gateway to a connection to both those different  
9 networks. That's not what the claim says and that's not  
10 what the specification says.

11 The translation, the gateway function is not  
12 between the mobile switch center translating into something  
13 for the packet switch network. The translation is from this  
14 roamer trying to use dialing sequences of his home network,  
15 the home network dialing sequences trying to communicate  
16 with the mobile network dialing sequences. So the two  
17 networks of the gateway, that the gateway is wrestling with,  
18 is the dialing sequences recognizing the home network and  
19 the switch and dialing sequence recognized by the visiting  
20 network. So the two networks are the two different phone  
21 networks, not the Internet and the mobile switch center.

22 And that's the translation function. It's  
23 saying, look, the gateway has to be -- you can have  
24 knowledge, if you look at Claim 10.

25 THE COURT: Mr. DiMatteo, I understand, I think,



1 the role of figures in a patent. But would you tell me,  
2 Figures 3 and 1, what is their purpose?

3 MR. DiMATTEO: Certainly. All right. Let me  
4 just briefly mention this while it is up here. The two  
5 networks, here, it is the home network and the first mobile  
6 network. That is the two networks that the gateway is  
7 translating between.

8 Let's go back to Figure 1.

9 Figure 1, in a preferred embodiment, the  
10 intelligent gateway, not only does its translations with the  
11 mobile switch center, but has a connection with the packet  
12 switch network.

13 THE COURT: In Figure 1, where is the  
14 intelligent gateway?

15 MR. DiMATTEO: Figure 32. V.-I/G. That is what  
16 they want to limit it to. They say, oh, it's got to be  
17 connected to both. But there is no description of, okay, we  
18 are going to have to translate something here through this  
19 gateway and go out here. The intelligent gateway, there are  
20 embodiments that use the packet switch network. And I can  
21 give the long story for that, if the Court is so inclined.  
22 But the problem they are trying to solve doesn't need to be  
23 connected to a packet switch network at all.

24 The problem they are trying to solve is  
25 translating roaming dialing sequences into a sequence that

1 the visiting network can recognize.

2 THE COURT: Why does counsel argue -- perhaps  
3 you could address this directly -- that the Court needs to  
4 be mindful that these are system and method claims and that  
5 what Figure 1 addresses is not what Figure 2 is intended to  
6 address? And, of course, we must concern ourselves with the  
7 claim language, the spec.

8 MR. DiMATTEO: Certainly, Your Honor. The logic  
9 to his argument is, there is only one system disclosed, and  
10 the only system that is disclosed is connected to both a  
11 packet switch network and a mobile network. And he is  
12 wrong, because the specification says there are many  
13 different ones involved and it may be coupled to a packet  
14 switch network. So the only way you get there is with a  
15 specification that only discloses one system, and that  
16 system has to have this element.

17 This is a claim construction argument that's  
18 repeatedly rejected by the Federal Circuit. And certainly,  
19 the specification doesn't support it because this  
20 specification says it may be coupled. And the language of  
21 the claims are clear that when it wants to be coupled to  
22 another network, it's recited as coupled to another network.

23 So the specification doesn't get them there.  
24 True, we accept there are embodiments disclosed in which the  
25 gateway is connected --

1           THE COURT: I understand. I don't think that's  
2 his point. I will give him a chance to speak further.

3           MR. DiMATTEO: When we come to Figure 2 --  
4 actually, show 47, "according to some embodiments of the  
5 present invention."

6           So Figure 2 is going to disclose how the  
7 invention works, the system, according to some embodiment.

8           THE COURT: Let's say, as I suggested to  
9 counsel, we eliminate the figures altogether --

10          MR. DiMATTEO: And go to the claims.

11          THE COURT: -- and rely on the claim language  
12 and the specification.

13          MR. DiMATTEO: I love the claims.

14          THE COURT: So does the Federal Circuit.

15          MR. DiMATTEO: Right. Let's go to the claims.  
16 Let's take a look at just Claim 10. All it says is that the  
17 intelligent gateway is associated with a first mobile  
18 telephone network. It doesn't say that the intelligent  
19 gateway has to also be attached to another network. It does  
20 tell you that it's translating dialing sequences that would  
21 be recognized in the home in the first mobile network.  
22 That's the gateway function, the translation. I have got to  
23 translate these dialing sequences. They are foreign to me.  
24 When I am in Germany, my New York dialing sequences are  
25 foreign to a German. So I need a gateway. I need an

1 intelligent gateway to help me translate this. But there is  
2 nothing about the claims that says, oh, I need to also be  
3 connected to another network, a packet switch network.  
4 That's the description of Figure 2.

5 Here we are, using the elements, the mobile  
6 switch, intelligent gateway, doing the translation, its  
7 database, so on and so forth. And to drive home the point  
8 again, when we compare it to Claim 10, Slide 30, the claims  
9 tell us coupled to a packet switch network, coupled to a  
10 first mobile network.

11 So here now I am claiming what we see in Figure  
12 1, that embodiment.

13 I don't know if we have Claim 1 with Figure 1  
14 available.

15 Here, when I want to claim this embodiment --  
16 this is like a picture claim, Your Honor. I have an  
17 intelligent gateway, coupled to a packet switch network, and  
18 actually also coupled to other mobile networks, and the  
19 intelligent gateway being coupled to a mobile switch center,  
20 a first mobile network. So I am coupled to a first mobile  
21 network. So here I am coupled twice.

22 It is very simple. There is nothing about the  
23 specification that says our invention is an intelligent  
24 gateway that's connected to a mobile network and a packet.  
25 It's an option. Some embodiments have it. Some don't. It

1       may be. And the claims are very clear as to the gateway  
2       function. That is the translation.

3               I can address routing center. Or if you want to  
4       hear --

5               THE COURT: Go ahead on routing center.

6               I will give you the last word, Mr. DiMatteo.

7               MR. DiMATTEO: I appreciate that. I will try  
8       not to waste that opportunity.

9               THE COURT: You have the burden.

10              MR. DiMATTEO: Can I have No. 48, routing  
11       center.

12              Intelligent gateway, this whole mischief of  
13       routing center and mobile switch came with this one  
14       amendment, where it said, a mobile switch center in the  
15       first mobile telephone network, and mobile switch --

16              THE COURT: I get all that. Why don't you go  
17       straight to the heart of his argument of what he contends is  
18       the real rationale for wanting the Court to construe the  
19       term.

20              MR. DiMATTEO: On the dependent claim and the  
21       antecedent basis issues?

22              THE COURT: Yes.

23              MR. DiMATTEO: I didn't know I was that smart.

24              THE COURT: It's pretty conspiratorial.

25              MR. DiMATTEO: I am impressed.

1 I made that change because I wanted the Court to  
2 understand basically what a switching center is. It was a  
3 mobile switch, and changed to routing. Truth be told,  
4 routing is probably just a switch. You could say, instead  
5 of a mobile switch center, they could have just changed it  
6 to switch center.

7 THE COURT: In your view, what mischief does the  
8 defendants' proposed construction make? Because it includes  
9 mobile networks.

10 MR. DiMATTEO: None, Your Honor. The question  
11 then is -- the patent attorney made this amendment. When I  
12 say we don't know, there is nothing in the written record  
13 where either the examiner or the applicant is discussing the  
14 term routing center in a context which provides any more  
15 clarity other than it's a substitute for mobile switch. He  
16 did not -- perhaps a little sloppy -- he did not carry the  
17 amendment through to Claim 13.

18 Can we show Claim 13.

19 All right. The question before the Court is:  
20 What are the consequences when an applicant modifies an  
21 adjective on the word center -- here it was mobile switch to  
22 routing -- on a dependent claim that still has the other  
23 adjective, mobile switch center?

24 Can we actually put Claim 13 and 10 together?  
25 Maybe it will make sense.

1                   So what's happened here is, if you recall, this  
2                   said mobile switch center, then it has a dependent claim  
3                   here where he forgot to -- said change this to said routing  
4                   center. Tough question. What is the consequence of that?  
5                   And usually the Court is -- well, the Court is allowed to  
6                   clarify this when you don't have proper antecedent basis if  
7                   there is enough clarity. And it is pretty clear between  
8                   both parties that we agree that a routing center includes a  
9                   mobile switch center. So I see no ambiguity in the term  
10                  routing center to mobile switch center as further adapted to  
11                  prior art.

12                 THE COURT: Am I to understand that you have no  
13                  difficulty with any network element that routes dialing  
14                  sequences including but not limited to a mobile switch  
15                  center?

16                 MR. DiMATTEO: It has to do dialing sequences  
17                  and a call. It basically has to be a switch. It's not just  
18                  any switch. It's a switch in the telephone art that has got  
19                  to be able to take care of the call and a dialing sequence.

20                 THE COURT: Let me understand. I want to make  
21                  sure I am reading the most recent iteration of your  
22                  position.

23                 MR. DiMATTEO: I have both positions on a single  
24                  sheet of paper, Your Honor. I have an extra copy.

25                 THE COURT: I think you handed it up. Okay.

1                   MR. DiMATTEO: We are saying calls with dialing  
2 sequences. I don't mind any network that routes dialing  
3 sequence. I would want to add calls to their definition.  
4 But it's not limited to. That's the issue that we --

5                   THE COURT: Mr. Krevitt, in the latest  
6 submission, as I understand it, there has been an additional  
7 change, that is the addition of calls as well as to dialing  
8 sequences.

9                   It appears, Mr. DiMatteo, you don't have a real  
10 issue with the defendants' proposed construction, but not  
11 limited to a mobile switch center, you want the word calls,  
12 with calls added to dialing sequences.

13                  MR. DiMATTEO: Yes.

14                  THE COURT: You would take issue with that.

15                  MR. KREVITT: Your Honor, the claims preclude  
16 it.

17                  THE COURT: Then that is because you believe the  
18 claims preclude it.

19                  MR. KREVITT: Yes, Your Honor.

20                  MR. DiMATTEO: Let me address that argument.

21                  Can we show, Slide 16, Claim 10.

22                  The thrust of the argument is, well, the routing  
23 center only does dialing sequences because the rest of the  
24 claim says the routing center is adapted to route a dialing  
25 sequence.



1 I really don't understand it.

2 But the thrust of our position is, a routing  
3 center has to do call in a dialing sequence. We went  
4 through, every call we make has a dialing sequence and a  
5 voice attached to it. A routing center has to be a switch  
6 center, has to deal with both. This invention, though, says  
7 okay, I want to adapt this routing center. It's not saying  
8 the routing center --

9 THE COURT: Aren't there different claims in the  
10 patent that deal with these two different functions?

11 MR. DiMATTEO: There are. What this claim is  
12 capturing, this language, adapted to route said dialing  
13 sequence to said intelligent gateway, what that is referring  
14 to is, all right, in the prior art, we just had a mobile  
15 switch, but now we have got to change it. We have got to do  
16 something with this switch. We have to adapt it so that  
17 it's going to take the dialing sequence that it doesn't  
18 recognize and send it over to the intelligent gateway.

19 We have to change what is normally a routing  
20 center, which does call and dialing sequence, and we want to  
21 adapt it so I can strip off that call -- strip off the  
22 dialing sequence, and be able to send that over to the  
23 intelligent gateway. So that's the adapting. We are going  
24 to modify and adapt this routing center so that just the  
25 dialing sequence can go to the intelligent gateway.

1           There is nothing about that that mandates that a  
2           routing center only does dialing sequences.

3           THE COURT:   Isn't that what Claim 10 is devoted  
4           to, dialing sequences?

5           MR. DiMATTEO:   Right.   The intelligent gateway  
6           is going to translate them.

7           THE COURT:   Then Claim 13 says the system of  
8           Claim 10 wherein said mobile switch center is further  
9           adapted to route a call.

10          MR. DiMATTEO:   Right.   Let's get the whole thing  
11          up.   Do we have Claim 13 and 10 together.

12                 ...wherein the mobile switch center is further  
13           adapted to route a call corresponding to said dialing  
14           sequence to said destination number.

15                 To be clear -- can we go back to Figure 2 -- the  
16           dialing sequence is that translated by the intelligent  
17           gateway.   And what that claim is saying is that this mobile  
18           switch center now has to be adapted to accept this dialing  
19           sequence so that it can route the call.

20                 In simple terms, Claim 10 says, look, you have  
21           to adapt it so you can get to Step 2 and transfer the  
22           dialing sequence to Box 32.   And Claim 13 further says,  
23           okay, you got to adapt it to accept the dialing sequence  
24           back.   It's very simple.

25           THE COURT:   All right.

1 MR. DiMATTEO: Thank you, Your Honor.

2 THE COURT: Mr. Krevitt, why don't you address  
3 really in as succinct a manner as possible your discussion  
4 regarding gateway, and the definitions and whether there is  
5 agreement or not, that I had with Mr. DiMatteo.

6 MR. KREVITT: I will. Let me try take a step  
7 back and address the subject clearly and not reargue  
8 everything.

9 Some basic first principles.

10 First, we are not arguing that the claims are  
11 limited to embodiments. All of the discussion about that is  
12 just irrelevant. We are not saying limit the claims to the  
13 embodiments.

14 THE COURT: But, to be fair, Mr. DiMatteo says,  
15 in effect, you are.

16 MR. KREVITT: But we are not. Let me explain  
17 why.

18 THE COURT: Go ahead.

19 MR. KREVITT: This is our argument. We think we  
20 are right. But it's quite simple. Our argument --

21 THE COURT: Simple is good. I don't have a  
22 problem with simple.

23 MR. KREVITT: I think you will find this is  
24 simple.

25 The term gateway at that time had a plain and

1 ordinary meaning. That is in these definitions. When Mr.  
2 DiMatteo stood here for the second time and the first time,  
3 he has never disputed these definitions. I think he said he  
4 agreed with them. Instead he went to my brief and he  
5 plucked a sentence written by my articulate colleague, Mr.  
6 Roe, and took issue with that.

7 The definitions are clear. The plain and  
8 ordinary meaning of gateway is connecting two networks.  
9 That's what a gateway is. Otherwise, it could be just a  
10 computer, a network element. That is the first point.

11 THE COURT: Then we got into this discussion, he  
12 and I did, about, well, which networks are we talking about?

13 MR. KREVITT: Right. That's where the confusion  
14 came in, I think perhaps deliberately. And here is the  
15 point.

16 For purposes of this claim construction, it is  
17 our position that a gateway must connect two networks. The  
18 Court need not today -- the Court has never been asked --  
19 the arguments presented today by Starhome you will find  
20 nowhere in their briefs. They are brand-new. The Court  
21 need not today answer the question as to which networks the  
22 gateway sits between, as to which networks the gateway  
23 connects. The question is simply: What is the meaning of  
24 an intelligent gateway? And that is why I started, Your  
25 Honor, and that's why we briefed the question, and that's

1       why there has been confusion.

2               A gateway, the plain and ordinary meaning,  
3       that's where we start. Not the embodiments. The plain and  
4       ordinary meaning of gateway is connect two networks.

5               Now, Your Honor said, again, completely  
6       reasonably, let's go to the claims. And as I tried to  
7       explain, so I want to take a quick stab at that, the claims  
8       don't answer the question. If we had a situation where the  
9       claims said, a processor that does this and something, we  
10      might have, Your Honor may have addressed that very  
11      question, given the number of patents cases Your Honor has  
12      that deal with processors, what does a processor mean? You  
13      could stare at the claims forever, and the claim would have  
14      simply said a processor. And they would argue it means one  
15      thing, and we would argue it means another. And you would  
16      have to look elsewhere. The claim wouldn't answer the  
17      question.

18              We are not running away from the claim. We are  
19      simply saying that every single claim in this case, Your  
20      Honor, has the term intelligent gateway. It's the  
21      invention. And what was an intelligent gateway? Why did  
22      they choose intelligent gateway? They chose it because they  
23      knew the definition of gateway. It had a plain and ordinary  
24      meaning. That's why I started, Your Honor, after the  
25      definitions, with The present invention.

1                   Take me there, if you would.

2                   The present invention, before Mr. DiMatteo took  
3                   you to a portion of the specification that began with  
4                   Reference is now made at Figure 1, that is the portion that  
5                   Mr. DiMatteo showed you just now. The paragraph before it  
6                   doesn't relate to embodiments. It describes what the  
7                   invention is, again, consistent with the definition. It is  
8                   based upon a configuration comprising a packet switch  
9                   network connecting mobile networks via intelligent gateway.  
10                  We are not building in packet switch network to our  
11                  definition. We are not building mobile networks versus home  
12                  network.

13                  We are simply saying, with respect to Starhome,  
14                  unassailable, the term gateway has a plain and ordinary  
15                  meaning. It is connecting two networks.

16                  Why, then, Your Honor, did I take you through  
17                  Figure 1 and Figure 3 and the specification if I am not  
18                  trying to get you to limit the claims to the preferred  
19                  embodiments? Here is why. I was simply demonstrating to  
20                  Your Honor that in every instance in which the system is  
21                  described in this patent, not one embodiment, as Mr.  
22                  DiMatteo said, every single system embodiment that is  
23                  disclosed -- it is true, the patent says others may also be  
24                  covered by the claims -- but every single one that is  
25                  disclosed, that's Figures 1 and Figure 3, disclose the

1 gateway connecting networks, disclose the gateway consistent  
2 with the plain and ordinary meaning.

3 So I am not relying on the embodiments, urging  
4 the Court to limit the claims to an embodiment. That is not  
5 happening here.

6 What I am asking Your Honor to do is what we  
7 think the law requires, which is, if you have a plain and  
8 ordinary meaning of a term, we have these definitions,  
9 nobody has disputed them, it connects two networks. We have  
10 a plain and ordinary meaning. Absent some disclaimer,  
11 absent a contrary definition, absent a good reason, you  
12 adopt the plain and ordinary meaning of the term. Gateway  
13 has a plain and ordinary meaning. It is why, Your Honor --  
14 I won't belabor it -- why I took you to the foreign  
15 prosecution, not because again I want to limit to the  
16 foreign prosecution, but because they described a gateway  
17 completely consistently, defined it with the plain and  
18 ordinary meaning.

19 So the whole notion, again, with respect, Your  
20 Honor, that we are limiting to an embodiment, it is a red  
21 herring. Gateway has a plain and ordinary meaning. The  
22 patent, from the first word to the last, uses gateway in a  
23 manner consistent with the plain and ordinary meaning.

24 That is intelligent gateway.

25 Before moving on, I want to make sure that I am

1       answering Your Honor's questions directly and clearly.

2               THE COURT:   You have answered my question.

3               MR. KREVITT:   The most important thing, of  
4       course, from our perspective is that the Court --

5               THE COURT:   Comprehend the arguments that are  
6       being made.

7               MR. KREVITT:   Of course.

8               As to routing center, Your Honor, Your Honor  
9       asked a few questions about that, the question as to whether  
10      Claim 10, the routing center, should require it to also make  
11      calls, route calls as opposed to just a dialing sequence,  
12      Your Honor understands that argument very, very well. The  
13      claims absolutely preclude that argument. There can be no  
14      reasonable dispute on that question. The claims set it out.

15              As to whether there is antecedent basis for  
16      Claim 13, for the reasons I explained, Claim 10 is broader  
17      than Claim 13. It routes the dialing sequence to the  
18      intelligent gateway. Claim 13 routes the call to a  
19      destination number.

20              There is one point I want to make, though,  
21      because I think this got lost.

22              Routing center is broader than mobile switch  
23      center. And it can include a mobile switch center. But  
24      there is not perfect overlap, in this respect.

25              You could have a routing center that routes



1 dialing sequences, and you can have a totally different  
2 element, a mobile switch center, that then routes the call.  
3 They need not even be in the same device when you do have a  
4 mobile switch center. The claims don't require it.

5 For the reasons that we describe, there was  
6 other technology that existed and of which the applicants  
7 were aware and disclosed that would have performed the  
8 functions of a routing center that was not a mobile switch  
9 center.

10 The point there, Your Honor, is there simply is  
11 no antecedent basis at all for Claim 13, and Claim 10 cannot  
12 provide it. That is what the changes that you are hearing  
13 about today, adding calls, for example, are all designed to  
14 achieve. The amendment precludes that when they changed  
15 mobile switching center to routing center.

16 THE COURT: Thank you, Mr. Krevitt.

17 MR. KREVITT: Thank you, Your Honor.

18 THE COURT: Mr. DiMatteo, last word.

19 MR. DiMATTEO: I am afraid counsel for  
20 defendants is not being complete in his reference to the  
21 specification.

22 We have repeatedly shown you Figure 2, systems  
23 providing the services based upon a configuration, blah,  
24 blah, blah. If you look at the paragraph that hangs off of  
25 and describes, where the whole detailed description of the

1 present invention is presented, I can show it on the '431  
2 patent, because it's real crisp. It is all in one spot. In  
3 the '487 it is jiggered between two columns. I am taking  
4 the liberty here.

5 It says there are many embodiments -- this is  
6 classic open-ended invention description -- may be practiced  
7 without specific details. Other instances, well known  
8 procedures, methods, components have not been described.  
9 Some embodiments are directed to providing services to  
10 roaming subscribers of mobile networks. So on and so forth.

11 When we get to the penultimate paragraph that  
12 counsel for defendants says, systems providing these  
13 services based upon a configuration, blah, blah, blah, it's  
14 one of many embodiments disclosed. There is nothing about  
15 this specification, and this Court is now very familiar with  
16 it, which mandates that a gateway have to be connected to  
17 two disparate networks, a mobile network and a packet switch  
18 network.

19 And if we look at their definition -- can you  
20 show me the competing definitions? Letter A.

21 All right. We agree, a network element,  
22 intelligent gateway transfers information to and from a  
23 mobile network. You see that ad nauseam, Figure 2's use of  
24 the intelligent gateway. And they want also to transfer  
25 information to and from another network external to the

1 mobile network.

2 Nothing about the word gateway that mandates  
3 that transferred information, the intelligent gateway, the  
4 intelligent gateway of this invention should transfer  
5 information to and from another network external to the  
6 mobile network.

7 Thank you.

8 THE COURT: All right, counsel. I will take it  
9 under advisement and endeavor to issue a ruling within 30  
10 days.

11 MR. KREVITT: Your Honor, Your Honor's comments  
12 may have answered the question I am about to ask. We are  
13 prepared to address any --

14 THE COURT: I am not prepared to hear it.

15 MR. KREVITT: Very well, Your Honor. Thank you.

16 MR. DiMATTEO: Thank you for your time, Your  
17 Honor.

18 (Counsel respond "Thank you.")

19 (Hearing concluded at 11:50 a.m.)

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21 Reporter: Kevin Maurer

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